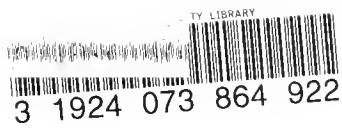


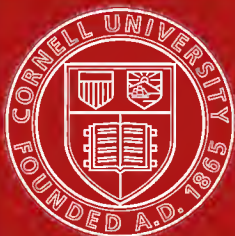


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SYNOPSES OF DRAINAGE LAWS

A HANDBOOK

PREPARED BY THE
RECLAMATION SECURITIES COMMITTEE
OF THE
INVESTMENT BANKERS ASSOCIATION OF AMERICA.
1918.

COLUMBIA, MISSOURI
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FOREWORD

This book has been prepared under the direction of the Reclamation Securities Committee of the Investment Bankers Association of America, for the purpose of furnishing to Bond dealers, Banks and Contractors a brief outline of the drainage laws of those states wherein such laws exist.

The committee first endeavored to secure, from all of the states having drainage laws, copies of their statutes, but finding that these laws were in many cases too voluminous for easy reference, it has been thought best to have an abstract or analysis made of each, by competent counsel, instead of publishing the full text of the laws.

We have not succeeded in obtaining synopses of the laws of a few of the states. Nevertheless the committee feels that this publication will be of value to those who are interested in drainage bonds or in drainage promotion; and hopes that it will result in arousing an interest in others, to the end that drainage bonds may have a deservedly broader market than they have heretofore enjoyed.

We are indebted to the following attorneys, by whose assistance in making the analyses of the statutes this book has become possible:

Arizona: CHARLES WOOLF, Esq., Tempe.

Arkansas: G. B. ROSE, Esq., Little Rock.

California: T. T. C. GREGORY, Esq., Insurance Exchange Bldg., San Francisco.

Colorado: JAMES H. PERSHING, Esq., Equitable Bldg., Denver.

Florida: GEORGE W. ABNER, Esq., Bartow.

Illinois: EDWARD C. CRAIG, Esq., Mattoon.

Indiana: FREDERICK E. WATSON, Esq., Indianapolis.

Iowa: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis, Mo.

Kansas: McCUNE, CALDWELL & DOWNING, Scarritt Bldg., Kansas City., Mo.

Kentucky: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis, Mo.

Louisiana: FOSTER, MILLING, SAAL & MILLING, New Orleans.

● *Minnesota:* WILLIAM A. WATTS, Esq., Duluth.

Mississippi: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis, Mo.

Missouri: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis.

New Mexico: REID & HERVEY, Roswell.

North Carolina: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis, Mo.

Ohio: EZRA M. KUHN, Secretary Miami Conservancy District, Dayton.

Oklahoma: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis, Mo.

Oregon: WILLIAM A. JOHNSON, Spalding Building, Portland.

Tennessee: CHARLES & RUTHERFORD, Merchants-Laclede Bldg., St. Louis, Mo.

Texas: J. T. SLUDEB, ESQ., San Antonio.

Utah: STORY & STEIGMEYER, Salt Lake City.

Washington: BURCHAM & BLAIR, Spokane.

Wisconsin: B. M. VAUGHAN, Grand Rapids.

The purpose of this publication being to furnish a handbook of ready reference, rather than a treatise on the laws of reclamation, the above named attorneys were not asked to furnish references to court decisions construing the statutes.

We, therefore, refer the reader to these attorneys for any further information relative to the statutes, or in connection with any questions that may arise concerning drainage problems in their different states.

J. SHEPPARD SMITH, Chairman.

ANDREW H. KAUFFMAN,

JOHN E. RILEY,

TOM K. SMITH,

JOHN R. LONGMIRE,

St. Louis.

P. M. LAMBERTON,

New Orleans.

Reclamation Securities Committee

Investment Bankers' Association of America.

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ANALYSIS OF DRAINAGE DISTRICT LAW OF ARIZONA.

(Chapter 5, Title 55, Civil Code, R. S. Ariz. 1913.)

Prepared by CHAS. WOOLF, Esq., Tempe, Arizona.

FORMATION OF DISTRICT.

Formation of a drainage district may be proposed by five or more of the holders of title, or evidence of title, to agricultural lands within the proposed district susceptible of drainage. These lands must be susceptible of drainage by the same general system of works, but such a system may include any system of drainage works of whatever character, combination or construction, consisting of one or more connected, or disconnected, parts, and having one or more outlets or means of disposing of the water collected. The organization of a district is proposed by petition, signed by the necessary number of holders of title, or evidence of title, as defined in the act, filed with the Board of Supervisors of the County in which the lands in the proposed district, or the greater portion of these lands, are situated. This petition must particularly describe the boundaries of the district, and pray for the organization of the drainage district under the provisions of this chapter. The petition must be accompanied by a bond in the amount of the probable cost necessary to be incurred by the Board of Supervisors for the organization of the district. The petition must be presented at a regular meeting of the Board of Supervisors, and must be accompanied by proof that the petition together with a notice of its presentation has been published in a newspaper in the County for at least two weeks before the date of presentation; and if any part of the proposed district is within another county, or counties, then like proof must be presented showing that petition and notice have been published in each county.

On presentation of the petition the Board of Supervisors hear the same, and may continue hearings not exceeding four weeks, at the conclusion of which the Board may make such

changes as seem advisable in the proposed boundaries, and if it shall be determined that the petition complies with the requirements of this chapter, enter upon its minutes an order finally establishing such boundaries. Any interested party to the record is given the right of appeal within ten days after the entry of such order to the Superior Court of the County. This appeal must be heard and determined within thirty (30) days after date of filing of notice of appeal, and the Court shall enter its judgment affirming, modifying or reversing the order appealed from and within ten days thereafter, must cause its remittitur to issue to the Board of Supervisors directing the Board to enter an order in accordance therewith.

When the order defining the boundaries of the district shall have been entered, the Board of Supervisors shall give notice of an election to be held in the proposed district for the purpose of determining whether or not the same shall be organized as a drainage district. This notice shall designate the name and boundaries of the district and the polling places for such election. This notice is published for two weeks before the election. At the election the electors vote on ballot, either for or against the organization of the district, and at the same time vote for three directors of the district. This election is conducted as nearly as practical in accordance with the general election laws of the State, and no person is entitled to vote except he be a qualified elector under the general election laws and shall be the owner of real property situate within the boundaries of the district on which he has paid taxes as shown by the last tax roll of the county. The returns of the election are made to the Board of Supervisors, who canvass the votes, and if it appears that a majority of the votes cast are in favor of the organization of the district, the Board then enters an order declaring the territory within the proposed boundaries organized as a drainage district, under the name designated, and also declares that the three persons receiving the highest number of votes to be elected as directors of the district. This order is entered upon the minutes, and a certified copy of the same filed in the office of the

County Recorder of each County in which the land of the proposed district is situated. This completes the organization of the district.

The directors elected must qualify by giving bond, and they hold their office until their successors are elected and qualify.

MEETINGS OF BOARD OF DIRECTORS:

Regular meetings of the Board of Directors are required to be held in March, June, September and December in each year, special meetings may be held at any time. At all meetings of the board a majority constitute a quorum.

POWERS OF BOARD OF DIRECTORS.

The Board has power to conduct the business of the district; make and execute all necessary contracts; to adopt a seal for the district; to provide for the payment of all debts against the district; to appoint engineers to have charge of the engineering for the district; to construct, maintain and operate all necessary drainage works; to enter upon any land to make surveys and locate drainage works; in the name of the district to acquire either by donation, purchase or condemnation any land or other property necessary for drainage works, and to hold and possess the same; and to establish by-laws for the conduct of the business of the district.

ELECTION OF BOARD OF DIRECTORS.

Directors are elected at elections held on the first Wednesday in October, biennially; directors so elected are required to qualify by giving bond, and taking oath of office within ten days after receiving notice of election. Vacancies on the Board are filled by appointment of the Board of Supervisors of the County. The election of directors, except as otherwise expressly provided in this chapter, are conducted as nearly as practicable in accordance with the general election laws of the State.

PROPERTY OF DISTRICT.

The legal title to all property acquired under this chapter, including all water collected or developed by means of drainage acquired is taken by the Board of Directors in the name of the district; and they may maintain all actions or proceedings necessary and proper to acquire, or to preserve and protect, any such property.

EMINENT DOMAIN.

The use of the property for drainage works is declared to be a public use, and may be taken by the district, pursuant to the laws of the State relating to eminent domain.

BOND ISSUES.

The Board of Directors must, as soon as practicable after the organization of the district, estimate and determine the amount of money necessary to be raised for the purpose of constructing the necessary drainage works and acquiring all property incident thereto, and thereupon call a special election and submit to the electors of the district the question as to whether the bonds of the district shall be issued for the amount so determined by such estimate. Notice of such election is given by publication and by posting; the notice specifies time of holding the election; the amount of bonds proposed to be issued; and the denomination and rate of interest thereon. If majority of the votes cast at the election are in favor of the bonds, then the Board of Directors must issue bonds for that amount; otherwise the Board enters on its record the fact that a majority of the votes were against the issuance of the bonds, and whenever thereafter a petition is presented to the board, signed by one-quarter or more of the qualified electors of the district, a new bond election can be held.

All bonds issued under this chapter are payable in gold coin of the United States, and except in case of funding bonds, are issued and payable in ten series, as follows:

5% of the number of the bonds fall due, on January 1st after 11 years from date of issue;

6% in 12 years; 11% in 17 years;

7% in 13 years; 13% in 18 years;

8% in 14 years; 15% in 19 years;

9% in 15 years; 16% in 20 years.

10% in 16 years;

These percentages being the entire amount of the issue, but each bond is payable at a given time for its entire amount, and not for a percentage. The principal and interest is payable at the office of the County Treasurer of the County wherein the office of the Board of Directors of the District is located. The bonds must be in the denomination of not less than \$100.00, nor more than \$1,000.00; negotiable in form; signed by the President and Secretary of the Board of Directors; and bear the seal of the district. The bonds of each issue must be numbered consecutively, bear the date of issue and have coupons attached signed by the Secretary for the several installments of interest. There must be expressed on the face of each bond that it is issued and signed under authority of this chapter; also the number of the issue of which the bond is a part; a record of the bonds sold; their number; the date of sale; price received; and the name of purchaser, must be kept by the Secretary.

The Board of Directors may sell the bonds in such quantities and at such times as may be necessary to meet cost of constructing drainage works. Before making any sale, however, the Board must, by resolution, declare its intention so to do, specifying the amount of bonds, the date, place and hour of sale, and give at least ten days notice of sale. At the time appointed the Board must meet at its office, open proposals, and award purchase of bonds to highest responsible bidders, or may reject any and all bids. Bidders may be required to deposit certified check with bid. No bonds must be sold for less than 95% of the par value.

These bonds are a lien upon the real property included within the district, and are preferred to that of any subsequent lien. The bonds and the interest are paid by revenues derived by tax levies upon the real property in the district.

For this purpose the Board of Directors of the District are required to furnish the Board of Supervisors and the Assessor of the County on or before the first meeting of the Board of Supervisors in July in each year, an estimate in writing of the amount needed for the purposes of the district for the ensuing fiscal year, this amount must include and be sufficient to meet the annual interest on outstanding bonds, the estimated cost of repairs, and incidental expenses of the district; and in any year in which any bonds fall due, an amount sufficient to pay the principal of such maturing bonds. On this estimate the Board of Supervisors must determine the rate of tax for these purposes by deducting 15 per cent. for anticipated delinquencies, from the total valuation of the real property of the district, and then divide the sum reported by the Board of Directors by the remainder of the total assessed value. These taxes are entered upon the regular assessment rolls of the County and collected in the same manner as other State or County taxes.

Provision is also made for the issuance of funding bonds. These may be issued whenever a district may have outstanding bonds, coupons or other indebtedness. Proceedings for the issuance of the funding bonds are initiated by a petition presented to the Board of Directors of the district, signed by a majority of the qualified electors therein, and which shall set forth the amount of the bonds, coupons and other indebtedness, proposed to be funded; a general description of the same; the total amount of bonds sought to be issued, which amount must not exceed the amount of bonds, coupons and other indebtedness then outstanding and proposed to be funded; and a full statement of the purposes for which the bonds are to be used. On presentation of such petition the same is recorded on the minutes of the Board of Directors, and the Board then calls a special election for the purpose of submitting to the electors of the district the question as to whether or not such bonds should be issued. Notice of this election is given by posting notices for twenty days and publication of the notice for at least two consecutive weeks before the election. The notice must show the amount of the

proposed issue, the amount of bond and other indebtedness proposed to be funded, with a general description of the same, and the time of holding the election. If at such election two-thirds of the votes cast are for the issuance of the bonds, the same are issued, otherwise not. If at the election the bonds are voted, the Board of Directors shall cause the same to be issued. These bonds are payable in gold coin of the United States of America, in twenty series, as follows: Five per cent. on the First day of January after the expiration of Twenty years from the date of issue, and an equal amount on the first day of January each year thereafter until all are fully paid; that is, five per cent. of the whole issue, not five per cent. of each bond, each being fully payable when due; these bonds bear interest at a rate not exceeding six per cent. per annum, payable semi-annually, are negotiable in form, of denominations not less than \$100.00 nor more than \$500.00, and conform in other respects with other bonds of the district; none of these bonds may be sold or exchanged for less than 95 per cent. of their par value. The bonds when executed may be deposited with the Treasurer of the County and may be exchanged for other bonds, coupons or other indebtedness of the district upon surrender of such other bonds, coupons or other indebtedness, which latter are then cancelled by the Treasurer, or the bonds may be sold by the Board of Directors of the district, and the money received therefor used to pay off outstanding bonds and other indebtedness; the sale of these bonds being conducted in the same manner as hereinbefore mentioned for the sale of other bonds of the district. The money received from the sale of these bonds is paid into the County Treasurer and must be applied by him exclusively to the payment of bonded and other outstanding indebtedness of the district outstanding at the time of the filing of the petition asking the Board of Directors to call the election for the issuance of funding bonds.

VALIDATION OF BONDS.

Within thirty days after the issue of any bonds the Board of Directors is required to bring an action in the

Superior Court of the County to determine the validity of such bonds. The action is in the nature of a proceeding in rem. Jurisdiction of all parties interested is obtained by publication of summons for not less than three weeks in some newspaper published in the County, designated by the Court, having jurisdiction of the proceeding. Service is complete in thirty days after the full publication of the summons. Anyone interested may, before the expiration of the thirty days, appear and contest the validity of the bonds. This proceeding must be speedily tried and judgment rendered declaring the bonds either valid or invalid. The Court is required to inquire into the regularity, legality and correctness of the proceeding, but must disregard any error, irregularity or omission which does not affect the substantial right of the parties to the proceeding. Either party has the right of appeal at any time within thirty days after the entry of judgment, and the appeal must be determined within three months from the time the same is taken. If the Board of Directors do not begin such proceeding within thirty days after the issuance of the bonds, then within ninety days after such issuance any district assessment payer may bring such a proceeding in the Superior Court to determine the validity of the bonds; the Board of Directors in such case are made defendants. Summons is served on the members of the board personally, if they are found within the State, if not, then by publication of the summons for three weeks in a newspaper of general circulation in the County, upon affidavit showing the facts, and in addition to serving the members of the board, summons is also published in the same manner, and for the same time, and with like effect, as in the case of proceedings instituted by the Board. The Board of Directors may appear and contest the action, and any district assessment payer or any one in interest may appear and defend the action. The proceedings and judgment being the same as in proceedings commenced by the Board. The action is speedily tried with right of appeal to either party, upon the same terms as in actions brought by the Board. No contest of any matter or thing in connection with, or leading up to, the issuance of bonds can be had other than within the

time and in the manner provided for the determination of the validity of bonds.

REDUCTION OF BONDED DEBT.

Whenever the Board of Directors shall determine that the authorized bonded indebtedness of the district is greater than will be needed to complete its drainage system as planned, also when there remains in the hands of the Board of Directors after the completion of its drainage system and the payment of all demands against said district, any bonds voted but not sold, and not necessary to be sold with which to raise the funds to complete the work, the Board may in either case call a special election for the purpose of determining, respectively, whether or not the bonded indebtedness shall be reduced to such sum as the Board has determined to be sufficient for the purpose, or the unsold bonds or so many of them as may be deemed best, may be destroyed. Such election in either case is called and held in the same manner as elections called and held for the purpose of voting bonds. If in the case of reducing the bonded indebtedness, a majority of the votes cast at the election are in favor of such reduction, then the board can issue and sell only the amount of bonds remaining after such reduction; but if a majority of votes are against such reduction, then the authority to issue bonds shall remain the same as before such special election. No reduction of bonded indebtedness shall in any way affect any order of the Court that may have been made adjudicating and affirming the validity of such bonds. If in the case of the destruction of bonds, a majority of the votes cast at the election are in favor of such destruction, then the President of the Board, in the presence of a majority of the members of the Board, must destroy the bonds voted to be destroyed, and the total amount of bonds so destroyed and cancelled shall be deducted from the sum authorized to be issued by the electors of the district, and no part thereof shall thereafter be reprinted or issued.

DISTRICT FUNDS.

The County Treasurer is made the Treasurer of the district. He is made the custodian of, and is responsible for the safe keeping and disbursement of, all money of the district. Payments are made by the Treasurer only upon warrants of the district signed by the President and attested by the Secretary of the Board of Directors.

CONSTRUCTION OF DRAINAGE WORKS.

After the adoption of a plan for the drainage works by the Board of Directors, they give notice by publication for not less than fifteen days, calling for bids for the construction of such work, or any portion thereof. If less than the whole work be advertised, then the portion advertised must be particularly described in the notice. The notice sets forth that the plans and specifications can be seen at the office of the Board; that proposals will be received for the construction of the work advertised; the time and place for opening proposals; and that the contract will be awarded to the lowest responsible bidder. When the proposals are received and at the time fixed in the notices, the same are opened in public, and as soon as convenient the work is let in portions, or as a whole, to the lowest responsible bidder. The Board, however, has the right to reject any and all bids, and readvertise for proposals, or may proceed to construct the work under their own superintendence. The contractors are required to give bond, with sufficient surety, to be approved by the Board, payable to the district, for fifty per cent. of the amount of the contract price. The work must be done under the direction and to the satisfaction of the engineer of the district, and the approval of the Board. No director or other officer of the district is permitted to be interested in any manner whatever in any contract awarded by the Board, or the profits to be derived therefrom; violation of this provision is made a misdemeanor, and conviction works a forfeiture of office, and subjects the person so convicted to punishment

by fine not exceeding Five Hundred Dollars, or by imprisonment not exceeding six months, or by both fine and imprisonment.

LIMIT OF INDEBTEDNESS.

Before the collection of the first assessment, the Board of Directors may incur indebtedness not exceeding in the aggregate Two Thousand Dollars, and may issue warrants of the district therefor, bearing interest at seven per cent; but the directors have no power to incur any other debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this chapter, and any debt so incurred is absolutely void.

TAX EXEMPTIONS.

All property of the district, as well as the bonds and other evidence of indebtedness thereof, is exempt from State, County or municipal taxes.

CHANGE BOUNDARIES OF DISTRICT.

The boundaries of a district may be changed, but such change does not impair or affect the organization, rights or privileges of any kind of the district, nor impair or affect any contract, obligation, lien or charge, or upon which the district was or might become liable had such change not been made. Specific provisions for the initiation, conduct and conclusion for making such changes are set forth in the statute, but are not deemed of sufficient interest to warrant a detailed analysis herein.

STATE LANDS.

Provision is made in this law for the payment of the proportionate cost of the construction and maintenance of drainage works by the State lands; under the provisions of the constitution and laws of Arizona, these lands are, of course, exempt from taxation and by the express provisions of this statute no tax lien on account of the district runs

against these lands, neither do bond issues create a lien upon these lands so long as the title thereof remains in the State, but upon the title passing from the State these lands become subject to any existing liens for tax or bonded indebtedness then existing, as well as all subsequent liens of like nature, the same as other lands within the district.

During the time the title remains in the State, claims are presented by the district to the proper State authorities for the proportionate cost of construction, maintenance and operation against these State lands; these claims are made payable out of the general funds of the State.

SYNOPSIS OF THE DRAINAGE LAWS OF ARKANSAS

Prepared by JUDGE G. B. ROSE of Little Rock.

When three or more owners of real property within a proposed district petition for the formation of a drainage district, describing generally the region to be included, the court appoints an engineer, who goes upon the ground, formulates a plan of improvement and ascertains the limits of the region which would be benefited. He then files his report with the clerk of the court, and a map of the district. The clerk then gives notice for two weeks by publication in some newspaper issued in the county, calling on all persons owning property within the district to appear before the court on the day fixed by it to show cause in favor of or against the establishment of the district. If at the hearing a petition is presented signed by a majority in value, in acreage or in number of the land owners, it becomes the duty of the court to enter an order establishing it. If no such petition is filed, the court then hears the evidence and determines whether it would be to the interests of the property owners of the district to have it established, and makes its order accordingly.

If the land lies all in one county, the proceedings are in the county court; if in more than one county, they are had in the circuit court of any county in which any of the lands lie.

An appeal may be taken within twenty days from the judgment establishing, or refusing to establish, the district.

When the district is established, the court appoints three owners of real property therein to act as commissioners. These must take the oath of office within thirty days. Vacancies upon the board are filled by the county court or judge in vacation; but if a majority in value of the property owners petition for the appointment of particular persons as commissioners, the court must appoint them. The board elects one of its number Chairman, and a majority constitutes a quorum.

Upon their qualification, the board employs an engineer and prepares plans for the improvement, and an estimate of the cost. These are filed with the court, along with the map. They then make an assessment of the benefits that will accrue to each tract of land, railroad, tram road and public road within the district, placing the name of the supposed owner opposite, and assessing any damages that will accrue. If they find that lands not embraced within the boundaries of the district will be benefited by the improvement, they also assess benefits against such lands, and report them specially to the court.

The clerk gives notice of the filing of the assessment, describing the lands in the largest sub-division possible, and on the day fixed in the notice all persons who consider themselves aggrieved by the assessment may appear and object thereto. If they do not object, the assessment stands confirmed. Appeals from an order of confirmation must be taken within 20 days.

If the land owner is dissatisfied with the damages assessed, his damages are then determined by a jury.

At any time after the filing of the assessment of benefits, the county court enters a judgment assessing taxes upon the betterments for an amount sufficient to pay the estimated cost of the improvement, with 10% added for unforeseen contingencies. This tax is divided into installments of not more than 25% per annum, and is a lien over all executions or incumbrances. An appeal from the judgment levying the taxes must be taken within twenty days.

Any owner may pay the amount of his assessment within thirty days after its confirmation; but if he does not do so the tax levied thereon bears interest at 6% per annum from the date of the levy.

The taxes are extended on the tax books along with the other taxes, and a fine of \$100 is levied upon the clerk for every time that he omits to enter the drainage tax, and a like fine is levied upon the collector for each time that he collects the other taxes and leaves the drainage tax uncollected.

The County treasurer is the treasurer of the district. but the board may deposit its funds with a bank which will pay not less than three, nor more than four per cent interest, and give bond as security.

If the first tax levy is not sufficient to pay for the improvement, or to pay the bonds issued by the commissioners, the board shall report the amount of the deficiency to the county court, which shall thereupon levy additional taxes required. In any event, the tax is to be for enough to pay the debts of the district, with 10% added for contingencies.

The board have control of the construction of the work. No work exceeding \$1000.00 shall be let without public advertisement; but they may accept or reject any bid. Contractors have to give bond for the faithful performance of their contracts, and the board must reserve 20% of the contract price until the work is completed.

In order to hasten the work, the board may borrow money at a rate of interest not exceeding 6%, and issue its negotiable bonds therefor, signed by the members of the board, and may pledge all assessments for the re-payment of the money loaned. It may also issue to the contractors who do the work, its negotiable evidences of debt, bearing interest at a rate not exceeding 6%. The bonds shall run for not more than thirty years, and may be serial; but if made payable all at the same time, there must be proper provision for a sinking fund.

The commissioners may alter the plans, but if they do so they must file the changed plans and give notice of the filing by publication. If any person deems that he is aggrieved by the change he may apply for a re-assessment of his benefits.

Every land owner may dig drains to connect his lands with the public ditches, and condemn a right-of-way across intervening lands.

If necessary to obtain a proper outlet for the drainage district, the ditches may be continued beyond its borders, and no one is allowed to connect with the continued ditch without paying compensation for its use.

The district does not cease to exist upon the completion of its system, but continues for the purpose of preserving it, with the necessary powers of taxation.

The taxes are paid between the first Monday in January and the tenth of April. If not paid by the latter date, a penalty of 25% is added, and interest at 6%, and proceedings are instituted in the chancery court for the foreclosure of the lien. These proceedings are strictly *in rem*, upon publication, and while the name of the supposed owner is given, no mistake in his name will affect their validity. The lands are sold, and if not bought in by any one else, are stricken off to the district.

If any bond or interest coupon is not paid within thirty days after its maturity, the holder may apply to the chancery court for a receiver, who takes possession of the affairs of the district, collects the taxes and applies them to the payment of the bonds and interest. Such receiver can bring suit for the collection of the taxes in the same way in which the district would sue.

The accounts of the district are audited annually, by the state bank examiner.

All cases involving the validity of the organization of such districts are treated as matters of public interest, advanced in all courts, and heard at the earliest practicable moment.

Sub-districts may be formed within the larger districts, for the purpose of giving more effectual drainage to the lands embraced therein. These sub-districts are formed in the same manner as the principal district, but the commissioners of the principal district are also the commissioners of the sub-district.

RECLAMATION AND DRAINAGE LAWS OF CALIFORNIA.

Prepared by THOMAS T. C. GREGORY ESQ. Insurance Exchange Building, San Francisco.

The condition of the reclamation and drainage law of California is at present unsatisfactory. The several acts with reference to the subject matter are too numerous. No reason exists for more than one act or body of laws covering the subject matter and completely providing for the organization and management of such districts. The procedure respecting issues of bonds and providing machinery for the payment of interest and principal should be standardized as well as simplified.

Reclamation, at first conducted in the state along simple individualistic and somewhat primitive lines, now follows great and comprehensive plans laid out after many years of engineering study and adopted by the United States and the State of California, and along which private enterprise has already started the construction of many substantial projects.

The adoption of general plans covering the principal areas in California subject to reclamation and drainage is of comparative recent date, and while some attempt has been made to adequately cooperate by providing the necessary machinery to work out the problems on a large scale, no final or satisfactory legislation has yet been passed which will provide for the financing of these enterprises by the issue of bonds which are intrinsically entitled to consideration in a broad and general market.

The responsibility for this probably lies in the short-sighted desire of those interested in the various districts to protect themselves and also by lack of a true appreciation of the necessities and requirements of a bond which is justly entitled to compete for the public demand.

No intrinsic reason exists why bonds of such districts properly formed should not, if conservatively issued under

uniform laws, as for instance are the bonds of California municipalities, be a safe and conservative investment, yielding a better return than municipals and entitled to a wide and ready market.

In recognition of the fact that there is no unified state policy with reference to such matters, the State Legislature in 1915 empowered the Governor to call a conference of individuals with state and Legislature officials interested in works of reclamation, irrigation, water storage, flood control and drainage, who should present not later than November 30th, 1916, findings and conclusions to the Governor, together with recommendations which seemed desirable to be made regarding legislation. Private enterprise also has given substantial consideration to the same subject matter and no doubt the result of the combined labors of all of those interested will be reflected in such amendments to the existing laws or in the passage of a comprehensive act covering the whole subject, which will permit the creation and conduct of such districts and the financing of the work thereof through issues of bonds which will be free from many of the manifest weaknesses of those which may be issued under the existing laws.

The laws of the state now in force are as follows:

1. Reclamation Districts, the formation of which is provided in the Political Code, Sections 3446 to 3493 inclusive, and under which the principal work in the state is being carried out. As, however, reclamation districts, which are political subdivisions of the state, may be created directly by act of Legislature as well as under the provisions of the Political Code, numerous districts in the state have been thus formed. Their operation, however, is governed by the provisions of the Political Code, except where in the act creating such a district different details as to procedure are provided, not infrequently the case.

2. Drainage Districts for swamp and overflowed lands, General Laws, Act 986.

3. Drainage Districts for agricultural lands other

4. Levee Districts, General Laws, Act 1913, to protect lands from overflow from rivers, streams or water courses.

5. Protection Districts, Statutes 1907, page 16, to protect lands against overflow or damage from waters of any unnavigable stream or water course.

6. An act providing for the issuance of bonds by reclamation districts. This is one of the earlier acts and of no present importance.

In the analysis of the acts divisions under the various sub-heads do not follow the Statute but are arbitrarily made to facilitate examination of any point about which information is desired.

RECLAMATION DISTRICTS.

(Political Code, Sec. 3446-3493.)

FORMATION.

Whenever the holders of title representing one-half or more of any body of swamp and overflowed, salt marsh, tide lands or other lands subject to flood and overflow, susceptible of one mode of reclamation, desire to reclaim the same, they may present to the Board of Supervisors of the County in which the lands, or the greater part thereof, are situate, a verified petition setting forth that they propose to form a district for the reclamation of the same, giving a description of the lands, their location and acreage, and after due notice by publication for four weeks the Board of Supervisors acquires jurisdiction to pass on the petition. Portions of the lands described may be excluded upon the final hearing, at which time the Board is required to make an order approving the petition as originally presented or as modified, and in such order the exterior boundaries of the district shall be described. The petition and order must be thereupon recorded and a certified copy sent to the Register of the State Land Office. Upon the approval of the petition the owners must adopt by-laws signed by the holders of the title representing a majority in acreage of the land embraced in the district. These by-laws may be

amended in the same manner as the original by-laws were adopted.

TRUSTEES.

Upon the formation of the district and the adoption of by-laws, the Board of Supervisors must call an election at which three eligible persons shall be selected for the management of the affairs of the district, who shall hold office for two years next succeeding their election, and until their successors are elected and qualified. They must keep an office at or near the district for the transaction of their business. The compensation of the Board is to be fixed by the Board but subject to the approval of the Board of Supervisors of the County. No Trustee shall cast the deciding vote upon any motion to pay money or award a contract directly to himself.

JUDICIAL VALIDATION OF FORMATION OF DISTRICT.

The Trustees of the reclamation district may then commence an action in the Superior Court of the County to determine the legality of the existence of such a district. The proceeding is declared by the Statute to be one in rem, and the judgment rendered therein is conclusive against all persons whomsoever and against the State of California. It is also provided that a proceeding in quo warranto or any similar proceeding to question the validity of the creation of the district shall not be maintained in the name of the People of the State against any district that shall have been continuously for five years next preceding the commencement of such proceeding acting as such and prosecuting or maintaining its works of reclamation in good faith.

EMPLOYMENT OF ENGINEERS.

The Board of Trustees have power to employ engineers to plan and estimate the costs of the work necessary for the reclamation of the lands of the district and to acquire by

purchase or condemnation the rights of way and materials necessary for the construction of their works.

PLAN OF RECLAMATION.

The plan for reclamation and every new, supplemental or additional plan shall be reported by the Board of Trustees to and be approved by the Board of Supervisors of the County.

ASSESSMENT—ACCORDING TO BENEFITS. WARRANTS.

Thereupon the Board of Supervisors of the County shall appoint three commissioners, who shall have no interest in any real estate within the district, to view and assess upon the lands within the district the sum estimated as the necessary cost of the improvement, and shall apportion the same according to the benefits that will accrue to each tract of land within the district by reason of the expenditure of the money.

Assessments must be collected when called by Trustees and paid into the County Treasury and placed by the Treasurer to the credit of the district and paid out for works of reclamation upon the warrants of the Trustees approved by the Board of Supervisors, or if bonds of such district have been issued upon said assessment, then the Treasurer shall set apart the moneys as a separate fund for the payment of the principal and interest of such bonds, and shall not pay any part of the moneys received from such assessment for any purpose other than the payment of the principal and interest of the bonds. The warrants drawn by the Trustees of the District must be presented to the Treasurer of the County, and if they are not paid on presentation endorsement is made thereon of such fact and they must be registered and thereafter bear interest from the date of the warrant at the rate of 7 per cent. per annum, and the owner of lands in the district may at any time pay assessments thereon, excepting an assessment upon which bonds have been issued, with warrants of the district. Ample provision is made for districts situated

partly in different counties. Additional assessments may be made if the original one is insufficient to provide for the complete reclamation of the lands or the repair and maintenance of the reclamation works, and the Board of Supervisors shall approve the same, power, however, being given to the commissioners to amend or correct the same at any time before the lists are finally approved. The lists must contain a description of each tract, acreage, name of the owner, if known, and if not, unknown, and the amount of the charge assessed against the tract.

OBJECTIONS TO ASSESSMENT.

When the lists are completed they should be filed with the Board of Supervisors of the County and notice of a hearing thereon given, at which time any person interested may file written objections, and the Board of Supervisors may set a day for such hearing.

FINALITY OF ASSESSMENTS AFTER HEARING.

When all matters are heard the Board of Supervisors shall make an order approving the assessment, endorsing such order upon the assessment list, and such decision of the Board of Supervisors is final, and thereafter the assessment list is conclusive evidence that the assessment has been made and levied according to law, except in an action hereinafter mentioned. The lists are thereupon filed with the County Treasurer. Any person aggrieved at the decision may within thirty days commence an action in the Superior Court of the County to have the assessment corrected, modified or annulled.

ASSESSMENT A LIEN.

From and after the filing of the list or certified copy thereof with the Treasurer of the County, the charges assessed upon any tract of land within the County shall constitute a lien thereon, and thereby shall impart notice thereof to all persons. No subsequent act or conduct of

the Trustees shall invalidate the assessment or lien, but such Trustees may be compelled by mandate or other proper proceeding to perform their duties as required by law.

COLLECTION OF ASSESSMENT—DELINQUENCY AND SALE.

The lists must remain in the office of the Treasurer for thirty days, and any person may pay the charge assessed against his tract of land to the Treasurer in gold coin or in warrants of the district. At the end of thirty days the Treasurer must return the lists to the Board of Trustees of the district, and all unpaid assessments shall be collected and paid to the County Treasurer in separate installments in such amounts and at such times as the Board of Trustees from time to time in its discretion may, by order entered in its minutes, direct; provided, however, that any land owner may at the time any installment is called pay the whole of such assessment, except in cases where bonds have been issued on the assessment. Provision is made for publishing notice of delinquents and of sale by the Trustees of the district of the property for the tax, if not paid. If no bid is made, then the district may become the purchaser for the amount of the installment due, including accrued interest, costs and penalty. If no redemption is made within a year the purchaser or the district shall be entitled to a deed, and the effect of the deed is to convey the property free of all liens and incumbrances excepting state, county and municipal taxes and the unpaid balance of the assessment, if any. Provision is also made for reassessment in case of invalid assessments, in which event any amount paid is to be credited on the subsequent assessment.

RETURN OF OVERPLUS TO OWNERS.

The work of reclamation is to be done under the direction of the Trustees and the accounts are open to inspection. When the Trustees certify that the work of reclamation has been completed, any money remaining in

the County Treasury to the credit of the district shall be distributed amongst the owners of the land within the district in such proportion as the owners contributed to the creation of the fund through assessment or otherwise.

BONDS MAY BE ISSUED ON WHOLE OR PART OF ASSESSMENT.

Whenever in any reclamation district any assessment has been levied and assessed on the lands therein and remains unpaid in whole or in part where, in the judgment of the Board of Trustees, it would be to the best interests of the district and to the land owners to issue bonds for the purpose of obtaining money to pay the cost of reclamation, the indebtedness of the district or any other legal charge, or when the owners of more than one-half of the land of the district file a petition with the Secretary of the Board, the Trustees shall order a special election submitting to the land owners in the district the question of whether or not the bonds of the district shall be issued in an amount equal to the amount of such assessment or the part of the assessment remaining unpaid.

SPECIAL ELECTION.

Notice shall be given for at least twenty days by posting and publication, and at the election each owner of lands in the district shall be entitled to vote in person or by proxy and have the right to cast one vote for each dollar's worth of real estate owned by him in the district, the value thereof to be determined from the next preceding assessment roll of the County where the same is situated; and the Board of Trustees of the District shall procure prior to the election a list certified by the Assessor. Strict account of the ballots must be kept. The usual provisions are made for officers of the election and for keeping the polls open and for the canvassing of the votes, all of which shall be certified to the Board of Supervisors of the County. Any person interested may contest the election within twenty days after the result has been declared by filing a Complaint in the Superior Court, in the absence of which the result of the Board of Election is deemed final and conclusive.

BONDS—EXECUTION AND DENOMINATIONS—RATE OF INTEREST,
FORM, ETC.

If a majority of the votes cast are in favor of the issuance of bonds, the Trustee shall cause bonds in that amount to be executed and delivered, together with the assessment list, to the Treasurer of the County, which bonds shall be in the denomination of not less than One Hundred or more than One Thousand Dollars each, signed by the President of the Board of Trustees of the District and attested by the County Auditor, numbered consecutively as sold, and bearing date at the time of their execution, and shall bear interest at the rate of six per cent. per annum, payable semi-annually on January 1st and July 1st of each year, at the office of the County Treasurer, upon presentation of the proper coupons. If any coupons shall not be paid when presented because there are no funds the Treasurer shall endorse upon such coupon "not paid for want of funds" and thereafter the amount due on such coupons shall bear interest at the rate of six per cent. per annum compounded semi-annually. The principal of the bonds shall be payable at such times as the Trustees may prescribe, which time must be expressed in the bonds, but not less than ten per cent. of the whole amount of bonds shall be paid in ten years from the date of their issue, and not less than five per cent. thereof each succeeding year thereafter until all are paid. All bonds must be made payable either on the 1st day of July or on the 1st day of January. If any bond shall not be presented for payment when it becomes due it shall cease to draw interest, but if presented and not paid for want of funds, shall be endorsed as hereinbefore provided for coupons. The forms of the bond and interest coupon are set forth in the law.

SALE OF BONDS.

When directed by the Trustees bonds are sold by Treasurer of County for the best price obtainable, but in no event less than face value plus accrued interest. Twenty

days' notice is required before sale, to be given by publication in County newspaper and in such other newspaper as the Trustees may designate. Bonds are to be sold to the highest and best responsible bidder. Trustees may reject any and all bids. Where sufficient bonds cannot be sold contracts may be made payable in bonds at par.

JUDICIAL VALIDATION OF BONDS.

When bonds have been delivered to the Treasurer of the County proceedings may be commenced in the Superior Court by the Trustees of the District or any owner of land to have it determined that the bonds are a legal obligation of the district. Procedure therefor is outlined in detail and summons is to be published for three weeks in a newspaper in the County. Land owners may appear and answer setting forth invalidity of bonds. If no answer be filed the Court shall enter judgment. In case of answer proceeding shall be tried as other civil cases. Judgment therein is a judgment in rem and conclusive against the district, all land owners therein, and all other interested parties.

MACHINERY FOR PAYMENT OF PRINCIPAL AND INTEREST OF BONDS.

Principal and interest shall be paid by revenue derived as follows: 90 days before any sum shall become due the Trustees of the district shall direct an installment of the assessment theretofore levied as may be necessary to pay the same, shall be collected and paid into the County Treasury to the credit of the bond fund. In case of default the same proceedings to be had as in collection of assessments. Sums received by the Treasurer are to be held in separate bond fund. Provision is also made for reclamation districts situated in different counties. On a sale of bonds the County Treasurer is authorized to accept outstanding warrants with accrued interest in payment therefor.

PERSONS AND INSTITUTIONS WHO MAY PURCHASE AND HOLD BONDS.

Bonds may be purchased or received in pledge for loans by banks, trust companies guardians, executors, administrators, or by any public officer or officers of the State, any county, city, municipal or corporate body therein holding funds which they are allowed by law to invest or loan.

ADDITIONAL ASSESSMENT IF FIRST INADEQUATE.

If the assessment in any district upon which bonds have been issued proves inadequate to provide funds, another assessment must be made sufficient to pay deficiency, and assessments must be made from time to time to meet any deficiency arising in the payment of bonds, and Trustees may order special election to be held prior to making assessments to determine whether or not the bonds shall be issued therefor.

CONSOLIDATION OF DISTRICTS.

Consolidation and reorganization of districts may be had by the owners of a majority of acres of land in each of two or more reclamation districts filing notice with the County Recorder. Certified copy of the notice shall be forwarded to the State Land Register. Thereafter all proceedings are the same as though district were organized upon original petition. Such consolidation and reorganization shall, however, not invalidate indebtedness of original districts, and all laws, rules and regulations for the assessing, levying and collecting of taxes or assessments will remain in full force until all outstanding indebtedness has been paid and liquidated. Provisions relating to issue and sale of bonds made applicable to such districts.

CHANGE OF BOUNDARIES OF DISTRICTS.

Owners of more than two-thirds of the land within a reclamation district may have the same set apart into a

new district if the old district is not prosecuting its work of reclamation with sufficient diligence. The owners of a majority of acres of land in a compact form may become part of a reclamation district. Procedure is provided for the change in the boundaries of reclamation districts. Land may be excluded. Procedure is provided by petition to Board of Supervisors, publication of notice and service by mail. It is provided, however, that if the holders of the legal title representing ten per cent. of the assessed valuation of all of the lands within the district file with the Board of Supervisors written objections to the withdrawal of lands from the district, it should be the duty of the Board to deny the petition and refuse to exclude the lands. If there are outstanding bonds of the district at the time of the petition to change boundaries, consent may be given by the holders, but there shall be no release of any lands excluded from the district from any obligation to pay any outstanding bonds or indebtedness.

ELECTION OF TRUSTEES.

Elections of Trustees are held every two years after such notice as Board of Supervisors direct, which shall be not less than one month, and in such election each bona fide owner of lands in the district shall be entitled to vote in person or by proxy, having the right to cast one vote for each dollar's worth of real estate owned by him, the value thereof to be determined from the next preceding assessment roll, and the majority of votes cast at such election shall elect. Every owner of real estate has the right to cumulate his votes. The Board of Supervisors on application of any land owner in the district shall appoint a time and place for holding election and give notice thereof. Inspectors and judges are appointed by the Board of Supervisors, and in case of failure to appoint Board of Election, voters present at opening of polls may supply the place of an absent member. In case of vacancy in the Board of Trustees the Board of Supervisors shall fill the vacancy.

LAND ALREADY RECLAIMED MAY BE FORMED INTO DISTRICT.

Provision is made for the establishment of reclamation district by any body of swamp and overflowed, salt marsh or tide lands susceptible of one mode of reclamation and already reclaimed or in process of reclamation and not included in any reclamation district, that may desire to maintain, protect or repair the works of reclamation thereon. Such district shall be subject to all of the provisions of the law relating to the formation of reclamation districts and proceedings thereof.

DISSOLUTION OF DISTRICT.

Action may be brought by the Attorney General of the State for dissolution of swamp land or reclamation district for non-user of its corporate powers. Pleadings and procedure are defined. If upon the trial of the action it be determined by the Court that for five years prior to the passage of the Act Trustees have been elected or exercised the powers of a corporation or performed any duties or that the corporation is not in debt or if in debt that all claims are barred by the Statute of Limitations, the Court may then dissolve the corporation.

NOTE: In addition to formation under the provisions of the Political Code, a reclamation district might be organized by act of Legislature.

DRAINAGE DISTRICTS.

(General Laws, Act 986.)

FORMATION.

Whenever ten or more land owners within a district containing a body of wet, swamp or overflowed lands, susceptible of drainage by a ditch or drain or a system of ditches or drains, shall file a petition for the establishment of such system of drainage and defining the boundary of the district proposed to be benefited, and shall also give the Supervisors a bond for the payment of costs which may

accrue if the petition is not granted, the Supervisors shall appoint a day for the hearing of such petition and give notice by publication thereof. Territory within municipal corporations may be included in such district.

Before passing any resolution of intention thereafter provided, plans and specifications for substantially the proposed work and district shall be furnished by someone designated by the Supervisors, which shall include an estimate of the aggregate amount of the cost thereof. Before ordering any work to be done under the act the Board of Supervisors must pass a resolution of intention so to do, the form of which is prescribed by the Statute, in which it is set forth that the costs and expenses of the work will be provided by bonds which will be issued in the amount of the same bearing interest at a specified rate per annum, payable semi-annually, and a certain portion of the principal payable annually, all in gold coin. The Supervisors are authorized to determine the rate of interest which shall not exceed 7 per cent. per annum. The bonds are to be in the form afterwards provided in the Act. Upon publication of the resolution of intention, as provided, the Board of Supervisors acquire jurisdiction to proceed with the hearing. At the time set for the hearing land owners may make objections with respect to the boundaries of the district. The board of Supervisors thereupon shall fix as the boundaries of the district those originally proposed or as modified.

PERFORMANCE OF WORK.

Supervisors may thereupon order the work to be done and fix a time for receiving proposals for doing the work, directing the Clerk to give notice accordingly. This notice inviting sealed proposals and bids shall be published and the work let to the lowest responsible bidder.

CONTRACT FOR WORK.

The presiding officer of the Board of Supervisors shall execute all contracts and approve bonds required which

shall run in favor of the county in an amount not less than one-half of the contract price of the work, signed by the contractor, with sufficient sureties. This contract shall undertake on behalf of the county that the Board of Supervisors will, on fulfillment and performance of the contract on the part of the contractor, take all steps under the act to effect the issuance of the bonds.

COMPLETION OF WORK.

When the work is finished a declaration to that effect, together with an itemized statement of all of the incidental costs and expenses of the work, is filed with the clerk of the Board of Supervisors; the aggregate of such sums and also the amount due as of the contract price, and also the gross sum for a bond issue representing the entire amount as claimed by the contractor, must be stated, which must be properly authenticated as provided, and the time is thereupon fixed and notice given for the purpose of determining whether the work shall be accepted as completed according to the contract and for determining the aggregate amount for which bonds shall be issued. Notice of this hearing is provided in the Statute. Objection may be made at the time of the hearing to the acceptance of the work on the ground that it has not been completed or done according to the contract, and evidence may be introduced before the Board. If it appears that the contract is incomplete the hearing may be continued and an order made that it should be completed in the particulars required.

BONDS ISSUED UPON COMPLETION OF WORK.

When the Board has determined that the work has been completed it shall by resolution declare that the work is accepted and state the aggregate amount for which bonds shall be issued.

TREASURER TO ISSUE BONDS—FORM, INTEREST, ETC.

The Clerk of the Board of Supervisors shall transmit to the County Treasurer an attested copy of the final order

just mentioned, and upon receipt of the same the Treasurer shall issue bonds in the aggregate of the principal as stated. Interest is payable on the 2nd day of January and July. The form is prescribed by the Statute. Interest coupons are to be devised by the Treasurer and the bonds are to be signed by the presiding officer of the Board of Supervisors and the Treasurer of the County. The bonds shall thereupon be delivered to the contractor or his order. Other terms and conditions of the issue are to be determined by the Board of Supervisors.

TAX LEVY—SPECIAL FUND.

A special fund is thereupon created for the discharge and payment of the bonds with interest and other costs of the organization of the district to be constituted from funds derived from collection of assessments levied against lands found to be benefited by the improvements to be constructed, and each year at the time of the levy of the general state and county taxes there should be levied upon all lands in the drainage improvement district a special assessment upon the lands found to be benefited by such improvement in an amount clearly sufficient to pay all the principal and interest which has and will become due on the bonds in any one year, and to maintain and repair the works and improvements therein before the proceeds of another assessment can be made available.

SALE OF BONDS.

It is the duty of the Board to advertise the bonds for sale and sell them to the highest responsible bidder.

POWERS OF SUPERVISORS IN CARRYING OUT WORK.

Supervisors are vested with the power of appointing engineer and superintendent of works, causing specifications to be prepared, filling all vacancies. All costs and expenses of the proceeding are to be chargeable to and paid by the contractor. The County Treasurer, however, may make

delivery of the bonds if money sufficient to meet the costs and expenses chargeable to the contractor are deposited with him, as to which the contractor and all persons claiming under him any interest in said bonds shall be deemed to have notice. After adopting the plans and specifications and before executing a contract for the construction of the improvement, Supervisors shall direct the County surveyor to estimate the total cost thereof and assess the benefits to the lands in the District; also to assess damages and to do all other things necessary to carry out the provisions of the act. The cost of the work shall be assessed in proportion to the benefits to be derived from said work. A written report of the assessment of the benefits and damages shall be filed with the Board of Supervisors and when the same are approved by the Board a copy shall be recorded in the office of the County Recorder. The report of the County Surveyor shall be thereupon set for hearing and after notice of at least three weeks, a copy of which is provided by the Statute, objections may be heard by the Board of Supervisors, whose action shall be final and conclusive. The action of the Board upon the objections thereupon shall be final and conclusive as to all matters which they might have remedied or avoided, and no assessment shall be set aside except upon such hearing for any error, defect or informality therein or the proceedings prior thereto where the district has been legally formed and notice of the hearing of the report has been given as required.

ASSESSMENT OF MONEY FOR PAYMENT OF BONDS.

After the report has been adopted the Board of Supervisors shall by order provide the amount of money to be raised by assessment each year, and a certified copy of the report, assessment and plat as adopted and confirmed by the Board of Supervisors, together with a certified copy of the order fixing the sum to be raised and the number of years the assessment is to continue, is filed with the Tax Collector and thereby a lien is constituted upon the property

and the assessments shall become due and payable on the 1st of October of each year. Moneys arising from the sale shall be put in a separate fund which shall be used only to retire the bonds issued, also to pay other incidental expenses. Payments from such fund are to be made in the same way as is customary with county claims. Upon filing a certified copy the Tax Collector shall give notice that the amounts therein are payable on the first Monday in October or that the same will be collected as are delinquent taxes. Delinquent assessments are to be collected and paid over in the same manner as State and County taxes, and provisions of the Political Code of the State not in conflict with the provisions of the Act are made applicable in the collection of assessments and delinquent assessments. Provision is also made for the levy and collection of tax for maintenance which is to be placed in the Treasury to the credit of the fund of the district.

EFFECT ON OTHER ACTS.

The act expressly provides that it is not intended to supersede or repeal any other act for the construction and maintenance of ditches or for drainage purposes, but is intended as an independent and alternative means of constructing such ditches where most applicable or desirable to the parties interested.

DRAINAGE DISTRICTS.

FOR AGRICULTURAL LANDS OTHER THAN SWAMP AND
OVERFLOWED.

(General Laws, Act 987.)

FORMATION.

Fifty or a majority of the holders of title in agricultural lands other than swamp and overflowed lands, which are susceptible of one general mode of reclamation by the same system of works, may propose organization of drainage district by petition presented to the Board of Supervisors of the County where the proposed district or the greater portion

thereof is situated, accompanying the petition with a sufficient bond in double the amount of the probable cost of organizing the district. The petition must be published at least two weeks before a regular meeting of the Board of Supervisors. The Board shall not modify the boundaries so as to exclude any territory which is susceptible of drainage by the same system of works, nor shall any lands, which will not in judgment of the Board be benefited by drainage, be included. The Board must then determine whether the petition complies with the requirements of the act and enter its determination upon the minutes. The right of appeal is given to any person interested to the Superior Court, provided, however, that all appeals taken shall be consolidated and tried together. The appeals shall be taken within ten days after the entry of the order by the Board of Supervisors, and the Superior Court may affirm, modify or reverse the order appealed from. Within ten days thereafter the Superior Court must cause its remittitur to issue to the Board of Supervisors. The appeal shall be heard and determined within thirty days from the time of filing the notice of appeal and it shall be taken and heard in the same manner as appeals from Justices' Courts to the Superior Court, except as otherwise provided in the act.

DIVISION OF DISTRICT AND ELECTION OF DIRECTORS.

The Board of Supervisors shall thereupon divide the district into three or five divisions, and one director which shall be an elector and resident free-holder of a division, unless, when requested in the petition, three directors who shall be resident electors and free-holders of the district shall be elected at large by the qualified electors of the district.

FORMATION SUBMITTED TO ELECTION.

The Board of Supervisors shall then give notice of an election to be held for the purpose of determining whether or not the district shall be organized under the provisions of the act. Election is to be conducted as nearly as prac-

ticable in accordance with the general election laws of the state, but no particular form of ballot is required. The Board of Supervisors shall canvass the votes and if a majority are favorable shall, by an order, declare such territory organized as a drainage district, and declare the persons receiving respectively the highest number of votes duly elected to such office. A copy of this order shall be immediately filed with the County Recorder and sent to the Clerk of the Board of Supervisors of any other counties in which lands are situated.

FORMATION OF DISTRICT MAY BE CONTESTED.

Such election on organization may be contested by any person owning property liable to assessment, and action is brought in the Superior Court. Contest must be brought within twenty days after canvass of the vote and the right of appeal to either party is limited to within thirty days from entry of judgment. The appeal must be heard and determined by the Supreme Court within sixty days from the time of filing the notice of appeal.

ORGANIZATION OF BOARD OF DIRECTORS.

The Board of Directors shall meet and classify themselves by lot into two classes before the expiration of term of office. A President and Secretary shall be appointed to hold office during the pleasure of the Board. Regular meetings must be held in March, June, September and December. The Board of Directors are required to publish in March of each year a verified statement of the financial condition of the district.

POWERS AND DUTIES OF BOARD OF DIRECTORS.

The Board of Directors shall manage and conduct the business affairs of the district, making all necessary contracts, and shall execute the same, shall have the power of eminent domain, provide by-laws, rules and regulations, change the boundaries of the divisions in the district. Di-

rectors are to be elected in February of each year, each Director being required to execute a bond in the sum of \$1000. Any vacancy shall be filled by appointment by the Supervisors. Full term of office is fixed at four years. Place of business must be at the county seat or at some point within the district.

ELECTIONS.

Provision is made for conducting all elections, canvassing the ballots and reporting the returns.

ISSUE OF BONDS.

The Directors when it is necessary to raise funds to carry out the work of the district shall call a special election at which shall be submitted the question as to whether or not the bonds of the district shall be issued in the amount determined by the Directors. Notice by posting and publication is required, and if at the election a majority of the votes are favorable, the result shall be declared and entered of record, and the Board of Directors shall cause the bonds to be issued.

All bonds issued shall be payable in gold coin in ten series as follows:

On the 1st day of January, after the expiration of eleven years, 5% of the whole number of the bonds.

On the 1st day of January, after the expiration of twelve years, 6%.

On the 1st day of January, after the expiration of thirteen years, 7%.

And so on until the 1st day of January after the expiration of twenty years, 16%, the enumerated percentages being of the entire amount of the bond issue, but each bond must be made payable at a given time for its entire amount, not for a percentage. Interest shall be at 6% per annum, payable semi-annually, and the denominations of the bonds shall be not less than \$100 nor more than \$500, to be in negotiable form, signed by the President and Secretary, with interest represented by coupons signed by the Secretary.

SALE OF BONDS.

The Board may sell the bonds from time to time in such quantities as may be necessary and most advantageous to raise money for the construction of the works, acquisition of property, to carry out the objects of the act. Before making any sale the Board shall by resolution declare its intention to sell a specified amount of the bonds and shall publish notice at least three weeks in some newspaper calling for sealed proposals for the purchase of the bonds, which shall be awarded at the time of sale to the highest responsible bidder, the Board being entitled to reject all bids but not entitled to sell any bonds for less than par. The Bonds under the provisions of the act are a lien on the property and the lien for the bonds of any issue shall be preferred to that for any subsequent issue. The bonds and interest thereon shall be paid by revenue derived from an annual assessment upon the real property. Should the money raised by the sale of bonds be insufficient or bonds be not voted, it shall be the duty of the Board to provide for the completion of the work by levy of assessments, but the estimate of the amount required and the question of making the levy must first be submitted to a vote of the electors in the district, which shall, after due notice, be held. A majority vote is required in order to carry the assessment.

BONDS MAY BE REFUNDED.

The payment of outstanding bonds, coupons or other evidence bonds. Upon petition presented to the Board of Directors signed by a majority of holders of title setting forth the amount of the bonds and coupons or other evidences of indebtedness proposed to be funded, together with the bonds are to be used (the amount of which is not to a whole and complete statement of the purposes for which exceed the outstanding obligations), the Board shall thereupon call a special election after notice posted and published and if two-thirds of the votes cast are in favor of the bonds the same shall be issued by the Board of Directors as follows:

On the 1st day of January, after the expiration of twenty years, 5% of the whole amount of the bonds. .

And on the 1st day of January of each year thereafter an equal amount of the bonds until all have been finally paid. Such bonds are to bear interest at the rate of 6% per annum, payable semi-annually, shall be negotiable in form and of denominations of not less than \$100 nor more than \$500, and it shall be unlawful to sell or exchange any of the bonds for less than their par value. When executed, they shall be deposited with the Treasurer of the County and exchanged for bonds or indebtedness proposed to be funded upon surrender and cancellation of same.

SALE OF BONDS.

When such bonds are to be sold the Board may by resolution of intention sell in the same manner as prescribed for the sale of the original bonds, but in no event shall the sale be for less than par and accrued interest. Proceeds of the sale shall be kept in a separate fund to be applied exclusively to the payment of the obligations outstanding at the time of filing of the refunding petition and described therein. Contracts for such exchange may be made by the Board of Directors provided that they must not receive less than par for the bonds exchanged.

LEVY AND COLLECTION OF TAXES.

The Directors must on or before the first meeting of the Supervisors in September furnish the Supervisors and the Auditor of the counties wherein the district is located an estimate of the amount of money needed for the ensuing fiscal year, and the Supervisors must annually at the time of levying county taxes levy a tax sufficient to raise the amount reported by the Board of Directors. The Supervisors must determine the rate of such tax by deducting 15 per cent. for anticipated delinquencies from the total assessed value of the real property of the district within the county as it appears on the assessment roll of the county, and then dividing the sum reported by the Board of Di-

rectors as required to be raised by the remainder of such total assessed value. The tax so levied shall be computed and entered on the assessment roll by the County Auditor and if the Supervisors fail to levy the tax then the Auditor must do so. Such tax shall be collected at the same time and in the same manner as state and county taxes and when collected shall be paid into the County Treasury for the use of the district, and the provisions of the Political Code of the State prescribing the manner of levying and collecting taxes and the duties of the county officers with respect thereto are adopted.

PAYMENT OF MONEYS

The following funds are created under which the money belonging to the district shall be apportioned:

Bond, construction, general and funding funds. The Treasurer shall pay only the warrants signed by the President and attested by the Secretary of the Board of Directors. Whenever the bond fund amounts to \$10,000 in excess of any amount sufficient to pay the interest coupons the Board of Directors may require the Treasurer to pay such an amount of bonds not due as the money in the fund will redeem at the lowest value at which they may be offered for liquidation after advertising in the manner provided for the sale of bonds for sealed proposals for the redemption of the same. No bonds shall be redeemed at a rate above par. In case bids are equal the lowest numbered bonds shall have the preference. In case no bonds are presented the money shall be invested in United States or State bonds.

CONSTRUCTION OF WORKS.

After plans for the works are adopted the Board of Directors shall by publication call for bids for the construction of the work or any portion thereof and the contract shall be awarded to the lowest responsible bidder who shall give a good and sufficient bond in the amount of 50 per cent. of the contract price. All work shall be done under

the direction and to the satisfaction of the engineer and to be approved by the Board.

COMPENSATION OF BOARD OF DIRECTORS.

Each member of the Board of Directors shall receive \$3.00 per day for each day's attendance at the meetings of the Board, and actual and necessary expenses while engaged in official business under the order of the Board. No member must be interested directly or indirectly in any contract awarded or profits derived therefrom. Any violation is made a penal offense, punishable by fine and imprisonment.

ADDITIONAL POWERS OF BOARD OF DIRECTORS.

The Board has the power to construct the works necessary for the drainage of the district. It may also call special elections for the purpose of raising money to be applied to any of the purposes mentioned. These special elections require two-thirds of the vote cast to entitle the Board to raise funds by this method. They have no power to incur any debt or liability either by issuing the bonds or otherwise in excess of the provisions of the act, and any debt or liability incurred in excess of express conditions shall be and remain absolutely void. The right of way, ditches, drains, public plants, dams, reservoirs of the property shall not be taxed for state, county or municipal purposes.

ACTION TO DETERMINE VALIDITY OF BONDS.

Within thirty days after the issue of bonds the Board shall bring an action to determine their validity, which is in the nature of a proceeding in rem, and jurisdiction of all parties may be had by publication of summons for at least once a week for three weeks in some newspaper published in the county. Jurisdiction shall be completed within thirty days after the full publication of the summons. Anyone interested may before the expiration of the thirty-day period contest the validity of the bonds, coupons or other evidences of indebtedness, and if any such bonds are

shown to be invalid then the same can only be funded for the amount of such proportion thereof as equals the fair and reasonable value of whatever the district may have received in consideration therefor, together with unpaid interest thereon, and the amount of such proportion shall be determined and adjudicated by the Court in such action. Appeal is limited to thirty days after the entry of judgment, which must be heard and determined within three months from the time of taking such appeal.

If no such proceeding shall have been taken by the Board of Directors then after thirty and within ninety days after the issue of bonds any assessment payer may bring such an action. The Board of Directors shall be parties and the service of the summons may be made personally or by publication for three weeks in some newspaper published in the county. Anyone interested may appear and defend the action, and the same determination and adjudication may be had by the Court of the proceeding. Where more than one action is brought the proceedings may be consolidated. The Court in hearing the contests must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the proceeding.

CHANGE OF BOUNDARIES AND EXCLUSION OF LANDS.

Boundaries of the district may be changed in such way as not to affect the rights, privileges or obligations of the district. On petition tracts may be excluded and taken from the district after notice published for two weeks and posting. At the time of the hearing failure of any person interested in the district other than the holders of bonds outstanding who show cause in writing why the lands described in the petition should not be excluded from the district shall be deemed as an assent to such exclusion. If the evidence fails to sustain the petition or no evidence be introduced or if the Board deem it for the best interests of the district the petition may be denied. The Board has jurisdiction to exclude a portion only from the district.

If there be outstanding bonds the holders thereof may give their assent in writing to the exclusion of such lands from the district, and thereupon the lands so excluded shall be released from the lien of such outstanding bonds. The assent must be acknowledged by the several holders as in the case of a conveyance of land. Nothing provided in the act shall operate to release any of the lands excluded from the district from any obligation or of any valid outstanding bonds, and the lands excluded for such purposes shall be deemed part of the district, but the lands excluded shall not be liable for new obligations.

INCLUSION OF NEW LANDS.

Provision is also made for the addition of adjoining lands by petition signed by a majority of holders of contiguous lands. Upon filing the petition the Board shall order an election and give notice thereof. A majority vote is required to change the boundaries and include the property, in which case a copy of the order of the Board of Directors ordering such change duly certified shall be filed in the Recorder's office.

REDUCING BONDED INDEBTEDNESS.

Whenever the Board of Directors of a drainage district organized under the provisions of the act shall determine that the authorized bonded indebtedness is greater than the district is liable to need to complete its system as planned, and there be no outstanding bonds the Board of Directors may call a special election for the purpose of voting upon a proposition to reduce the bonded indebtedness to such sum as the Board may determine to be sufficient for such purpose. A majority vote is required to reduce the amount of the bonds. In case the holders of the outstanding bonds of the district desire to reduce the authorized bonded indebtedness, their assent may be obtained in the same manner as previously indicated, and if such assent is obtained the district shall be empowered to take advantage of all of the provisions of the act relating to such reduction.

UNSOLD BONDS MAY BE DESTROYED:

Whenever any amount of bonds remain on hand unsold after the drainage works are completed at a special election upon two-thirds majority of the votes the unused bonds may be destroyed and the issue closed.

EFFECT OF ACT.

Nothing in the act is to be construed as repealing or in any wise modifying the provisions of any act relating to the subject of drainage except an act passed in 1897, provisions of which so far as they conflict with the present act may be repealed.

LEVEE DISTRICTS.

(General Laws, Act 1913.)

FORMATION.

A majority of land owners within any portion of county may petition Board of Supervisors to have set apart into a levee district any such portion of the county for the purpose of protecting the lands embraced from overflow from any river, stream or streams or water course. The Board of Supervisors by resolution shall declare their intention to form such district, and notice is given by publication for thirty days of the time of hearing at which persons interested may be heard, after which hearing the Supervisors may declare such territory a levee district for the above purposes, recording the same in a book kept for that purpose.

ELECTION OF TRUSTEES.

Within ten days after the Supervisors have declared the territory a levee district they must give notice of an election to be held in the district of three eligible persons who shall be property owners to be Trustees of the district to hold office for two years following their election, which shall be held in the manner specified.

POWERS OF TRUSTEES.

Trustees may keep an office in or near the district for the transaction of business, where the records are to be kept, and such Board has the power to employ engineers to estimate the cost of works, the power to adopt, modify or change plans therefor, and also to construct, maintain and keep in repair all works which may be necessary. Each year the Board shall estimate the cost of all of the works and upon approval by a majority of the electors shall make a report to the Board of Supervisors of the county in which the district is situated showing the amount of money required by said district for all purposes for one year thereafter. This report shall be made to the Board of Supervisors on or before the 1st of September of each year and shall form the basis of the estimates of the Board of Supervisors for the amount of money required to be raised by assessment on the lands and personal property within such district for such year.

ANNUAL TAX LEVY.

The Board of Supervisors when fixing the annual tax rate of the county shall take as a basis the estimate of the Board of Trustees of the district for the amount of money to be raised in the district for that year, the valuation of the lands and the improvements furnished by the County Assessor, and must levy a tax upon all of the taxable property in the district sufficient to raise the amount set forth in the estimate and report as made by the Board of Trustees. The rate of taxation shall be ascertained by deducting 20 per cent. for anticipated delinquency from the aggregate value of all property in the district as shown by the statement prepared and furnished to the Board of Supervisors by the Assessor, then dividing the amount necessary to be raised in the levee district by the remainder of the aggregate assessed value shown in the statement furnished by the Assessor. The taxes so levied shall be computed and entered upon the assessment roll by the

Auditor and collected at the same time and in the same manner as state and county taxes, and when collected shall be held in the County Treasury for the use of the levee district. All taxes so levied shall be a lien upon the lands and property in the district in the manner and with the same effect and collected in the same way as are state and county taxes.

DISPOSITION OF MONEYS—WARRANTS.

Payment of all expenses of the work in the district shall be by warrant drawn upon the levee district fund on claims prepared in the manner required by law for the preparation of claims against the county and approved first by the Board of Trustees of the district.

CONSTRUCTION OF WORKS.

All works or repairs costing over \$500 shall be let by a contract after notice to the lowest responsible bidder. The Board may, however, reject any and all bids. Emergency work may be done by the Board.

DISTRICT IN DIFFERENT COUNTIES.

Provision is made for formation and government of district situated partly in different counties.

ACT NOT TO SUPERSEDE OTHER ACTS FOR RECLAMATION.

It is expressly stated in the act that it is not intended to supersede or repeal any other act for the construction and maintenance of ditches, levees, dykes or works for protection or for drainage or for reclamation but is intended as an independent and alternative means of constructing and erecting such ditches, levees, dykes or other works for protection where most applicable or desirable to the parties interested.

ISSUE OF BONDS OF LEVEE DISTRICT.

Under a subsequent and separate act (1922) provision is made for the incurring of bonded indebtedness to carry

out the works of a levee district. This act provides that whenever it shall become necessary in the opinion of the Board of Trustees of the levee district to perform work they shall direct the engineer of the district to make a report which after filing with the Board may be adopted and modified by them. Within ten days after the adoption of the report they shall give notice of the time of hearing when all persons may show cause why the work provided in the report should not be carried out. Objections must be in writing.

After hearing the Board of Trustees of the District shall determine whether to proceed in accordance with the original plan or one which shall be modified by their engineer at their direction and which may subsequently be approved by them.

The Board of Trustees then shall specify on their minutes the amount of bonds which it is proposed to issue, the rate of interest to be paid and the number of years, not exceeding thirty, which the bonds are to run. Also by such order shall provide for the submission to the tax-payers in the district of the question as to whether bonds shall be issued. Upon majority of the voters of the district voting at such election in favor of the bonds the Trustees must issue them, and by resolution entered upon its minutes the form of the bond and interest coupons shall be prescribed, the time when the principal is to be paid, the denominations, and an interest rate not exceeding 7 per cent. per annum shall be provided. The general form of the bond is set forth in the act. The bonds issued under the act are to be numbered consecutively, signed by the chairman of the Board of Trustees of the district and countersigned by the Auditor of the County. Thereupon they are to be delivered to the Treasurer, who shall sell the same to the highest bidder for gold coin, in no event for a less sum than the face value and accrued interest.

The Board of Trustees of the district shall cause to be levied and assessed upon all of the property in the district a sum sufficient to pay interest on the outstanding bonds, and such proportion of the principal that at the end of

ten years the sum raised from such levies shall equal at least 20 per cent. of the amount of bonds issued; at the end of fourteen years at least 40 per cent. of the amount; and at and before the date of the maturity of the bonds shall be equal to the whole amount of the principal; which money shall constitute the bond fund and held on special account. Whenever there is in this fund a surplus of \$500 or more over and above the interest maturing before the next levy, the Treasurer shall give notice by publication stating the amount of the surplus, and that sealed proposals will be received at his office for surrender of the bonds of the district from the lowest bidder, provided that no bids shall be accepted for an amount exceeding par value of the bonds with accrued interest. If bonds are not offered at par or less the Treasurer shall give notice that he will redeem bonds of certain numbers, and that if not presented for redemption within thirty days after the date of the first publication of such notice interest thereon will cease, and the amount due will be set aside for payment of the bonds when presented. All redemptions of bonds are to be made in order of their issuance.

PROTECTION DISTRICTS.

TO PROTECT AGAINST OVERFLOW OR DAMAGE FROM THE
WATERS OF ANY UNNAVIGABLE STREAM, WATER COURSE,
CANYON OR WASH.

(Statutes 1907, page 16.)

This act follows substantially, in fact almost literally, the act providing for Drainage Districts for agricultural lands other than swamp and overflowed lands (General Laws, Act 987) previously set forth.

It was introduced and passed four years after the Drainage District act and was evidently copied from it almost word for word.

AN ACT TO PROVIDE FOR THE ISSUING OF BONDS BY RECLAMATION DISTRICTS, ETC.

(Statutes 1895, page 197, Amended Statutes 1909, page 933.)

This is one of the earlier acts providing for the issue of bonds at a special election by a majority vote in an amount to be estimated by the Board of Trustees of the reclamation district, requiring bonds to be in the denomination of \$100 each, bearing interest at 7 per cent. per annum. The principal of the bonds and interest thereon to be met by the Board of Trustees calling in an installment of the assessment sufficient to pay the same.

SYNOPSIS OF THE DRAINAGE LAWS OF COLORADO

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I. HISTORICAL.

The first drainage law enacted by the Legislature of the State of Colorado was the act approved April 24, 1909, (Session Laws of Colorado 1909, chapter 161). This act provided for the organization of drainage districts as quasi-municipal corporations to be officered by a board of three directors elected by the land owners within the district, and further provided for the construction and maintenance of a drainage system, the cost of construction and maintenance to be paid for by an assessment upon the land within the district, such assessment to be proportionate to the cost of the system and the benefits to each tract of land to be derived from the drainage thereof. Assessments were made and levied upon the land and provision was made for the collection of the tax in the same manner as general taxes for state and county purposes. The law also provided for the issue of negotiable coupon bonds for the purpose of raising funds for the construction of a drainage system.

Said act of 1909 was repealed by the Legislature in 1911, and a new drainage law enacted (Session Laws 1911, chapter 124, act approved June 2, 1911). Said act is entitled, "An Act to provide for the organization and government of drainage districts." The act of 1911 was amended by chapter 75 of the Session Laws of Colorado, 1913 (act approved April 30, 1913), and again by chapters 101, 102 and 103 of the Session Laws of Colorado, 1915 (acts approved February 19, 1915).

The drainage district act of 1911 (Session Laws 1911, chapter 124) is substantially a copy of the irrigation district law (Session Laws 1905, chapter 113; Revised Statutes 1908, sections 3440-3494, as amended by chapter 194 of the Session Laws of 1907, by chapter 176 of the Session Laws of 1909, by chapter 154 of the Session Laws of 1911, by chapters 101, 102 and 103 of the Session Laws of 1913, and

chapters 104 to 110, inclusive, of the Session Laws of 1915). The Colorado irrigation district law is modelled upon and is substantially similar to the California "Wright Irrigation District Act" of 1887. See *Anderson v. Grand Valley Irrigation District et al.*, 35 Colo. 525.

The drainage district act of 1911 provided that the cost of the construction of a drainage system and the maintenance thereof should be covered by an assessment against the land within the district according to the superficial area thereof, and without special reference to benefits. This was the same method of assessment provided for in the irrigation district act. When an attempt was made to organize drainage districts under the provisions of the act of 1911 and provide for the payment of the cost of drainage systems therein, a serious practical difficulty was encountered. The amount of drainage in a given district was found to vary considerably, and land owners were unwilling to subject their land to the same assessment made irrespective of the amount of benefits contemplated. To meet this difficulty, the amendment of 1913 was adopted, which provides for a classification of lands in proportion to benefits, the tracts of land receiving the most or about equal benefits being marked 100, and lands receiving less benefits being marked with a less number denoting the per cent. of benefits. All assessments are then based upon the lands according to such classification. Even under this system of classification, considerable difficulty has been experienced in the establishment of such scale of apportionment, the law permitting appeals to the courts in case of alleged injuries or inequalities, and the effect of such appeals is such as so to delay construction operations as to render difficult if not impossible the financial arrangements necessary to meet the conditions.

II. SYNOPSIS.

Reclamation by drainage of lands not at present capable of cultivation or useful or fully so is declared to be conducive to public health, convenience, utility or welfare. The owners

of agricultural lands susceptible of drainage by the same general system of works may propose the organization of a drainage district by presenting to the board of county commissioners where the larger portion of said lands lie a petition, which may ask for an election upon the organization question or may request the establishment of the district without an election, if an election would be impracticable or would entail an undue expense. The petition may be in one or more counterparts, and shall be signed by a majority of the owners of lands within the proposed district, as well as by the owners in the aggregate of a majority of the total number of acres of land sought to be included in said district, and shall contain a general description of the boundaries of the proposed district and a statement that lands within the proposed district are not at present capable of cultivation or useful or fully so, and that they can be made more productive or useful by drainage, giving the names of owners of lands appearing of record and proposed to be embraced in the district. Such petition shall be accompanied by a map drawn to a scale of not less than two inches to the mile, and shall also be accompanied by a bond with sureties to be approved by the board of county commissioners, conditioned for the payment of the organization expenses, or in lieu of such bond, the county commissioners may in their discretion require payment of such estimated costs in advance.

Entrymen of lands under any law of the United States or of the State of Colorado are competent signers of a petition for the creation of a drainage district. The lands on which said entries shall have been made by entrymen for the purposes of such petition shall be considered as owned by them, and the drainage district act applies to said lands to the extent of the rights of such entrymen, and binds said lands as other lands in the district when the title of the State or of the United States is divested.

Prior to the presentation of the petition, it must be published in some newspaper of general circulation printed and published in the county where the petition is to be presented, for at least two weeks, together with a notice signed

by a committee selected by the petitioners and named in the petition, giving the time and place of the presentation of the same to the board of county commissioners.

At the time and place designated in the notice, the board of county commissioners must hear the petition, and applications for the exclusion of lands from said district and applications for the inclusion of lands therein, and may adjourn such hearing from time to time not exceeding four weeks in all.

The board of county commissioners may make such changes in the boundaries of the proposed district as may be necessary, by including therein upon the application of the owner or owners thereof other lands susceptible of drainage by the proposed system, or which will be benefited by said system of drainage, and by excluding therefrom lands mentioned in the petition which, in the opinion of the board of county commissioners, will not be susceptible of drainage thereby or will not be benefited by said system of drainage. The commissioners are not permitted to exclude from the proposed district any lands described in the petition which, in the opinion of the board, are susceptible of drainage by the proposed system or will be benefited thereby.

When the boundaries of a proposed drainage district shall have been determined as aforesaid, the board of county commissioners must make an order allowing the prayer of the petition and defining and establishing the boundaries and designating the name of the proposed district.

If, according to the prayer of the petition, the drainage system is to be established without the holding of an election, the board of county commissioners may cause a system of drainage to be constructed in the district as established, and may exercise all the powers and authority conferred by law upon boards of directors of drainage districts, and may continue to exercise such powers and perform such duties until a petition shall be signed by the owners of the larger portion of the lands within the

district or their duly authorized agents asking for the election of a board of directors, and upon the filing of such petition the board of county commissioners shall provide for the election of a board of directors of the district, which board shall thereafter exercise the duties of directors of a drainage district.

When the petition prays for an election for the purpose of determining whether or not the proposed district shall be organized, the commissioners must cause to be published a notice of said election, which shall contain the name of the proposed district, the boundaries thereof, the polling place or places, the names of the judges of election, the names of three or more persons eligible as directors of said district, and the date of the election. Such election notice must be published for at least two weeks preceding the election in a newspaper of general circulation printed and published within the county, and a like notice must be published in a like newspaper in each county within which any portion of the district may lie. The notice must also provide for the election of three directors, who must be land owners within the district, and the board of county commissioners may divide the district into three divisions or precincts for election purposes. Every owner of land within the district who is a citizen of the United States or has declared his intention to become such, and is a resident of the State of Colorado, shall be entitled to vote at such election in the precinct or division where he resides, or if a non-resident of such precinct or division, then in the precinct within which the greater portion of his land lies. The board of county commissioners must designate convenient polling places, and provide for the holding of such election by nominating three judges of election for each polling place. At such election, the electors cast their ballots containing the words "Drainage district—yes," or "Drainage district—no," and the voters of each division elect one director, who must be an owner of land within said division, and the three thus elected become the directors of the district if its organization be approved by the electors.

The board of county commissioners must meet on the second Monday following the election and canvass the votes.

cast thereat. If it shall appear that a majority of the votes cast are "Drainage district—yes," the board of county commissioners must make an order declaring the district duly organized, and that the persons who received the highest number of votes, respectively, are duly elected directors of the district. The commissioners must cause a certified copy of said order, together with a copy of the plat of the district, to be filed with the county clerk of each county in which any portion of the district lies, and thereafter no land within said district can be included within the boundaries of any other drainage district without the consent of the owner of the land sought to be embraced within such other district.

From and after such filing, the organization of the district is complete, and the officers thereof must forthwith enter upon the duties of their respective offices upon qualifying according to law, and shall hold their respective offices until their successors are elected and qualified.

No action can be brought or maintained or defense made affecting the validity of the organization of the district unless the same shall have been commenced or made within one year after the entry of the foregoing order.

The board of directors is organized by the election of a president and the appointment of a secretary, and the adoption of a drainage district seal, and has power to fix the compensation of all employes of the district. The board has the care and management of the affairs and business of the district, may cause surveys to be made for ditches and drainage works, cause a drainage system to be laid out and constructed. It may purchase or otherwise acquire by condemnation or otherwise a drainage system and the necessary rights-of-way therefor. The board of directors has no power to make any contract or authorize any expenditure involving more than Five Thousand Dollars unless such contract or expenditure shall be authorized, approved and ratified in writing by the owners of land in the drainage district equal in number to a majority of the votes cast at the last district election; and no contract or expenditure involving more than Ten Thousand Dollars shall be made or be binding unless the question of making such contract or expenditure shall have

been submitted and the expenditure authorized at an election in said district.

The board of directors must establish an office in the district and hold regular meetings thereat on the first Tuesday of January, April, July and October in each year, and may hold such special meetings as may be required for the proper transaction of business. Meetings of the board of directors are public and two directors constitute a quorum for the transaction of business. On all questions requiring a vote, there must be a concurrence of at least two directors. The records of the board are open to the inspection of the public during business hours.

The board of directors, their agents and employes have the right to enter upon any land in the district for the purpose of making surveys and in locating drainage ditches and laterals.

Title to property acquired is vested in the drainage district in its corporate name. Such property is held in trust for the purposes set forth in the drainage district law, and is exempt from taxation and is subject to the control, use and management of the board of directors. The board of directors is authorized to take conveyances or assurances in the name of the district and institute and maintain any and all actions, proceedings and suits at law or in equity necessary or proper in order fully to carry out the provisions of the law or to enforce, maintain, protect or preserve the rights, privileges and immunities created by the drainage law. The directors are entitled to receive two and one-half dollars per day while attending meetings or while engaged in the business of the district, together with actual and necessary expenses. The salary of the secretary shall not exceed Five Hundred Dollars per annum.

The regular election of directors is held on the first Tuesday after the first Monday of January in each alternate year, at which three directors must be elected and hold office for a term of two years and until their respective successors are elected and qualified. Within ten days after receiving the certificate of election, each director

must take and subscribe an official oath and file the same, together with his official bond in the penal sum of two thousand dollars, with sureties to be approved by the county judge, in the office of the county clerk of the county where the organization of the district was effectuated, and thereupon assumes the duties of his office.

Fifteen days prior to any election held under the provisions of the drainage district act, subsequent to the organization thereof, the secretary must cause notice, specifying the polling place of each precinct, to be posted in three public places in each precinct, giving the hour and place of holding the election, and at the same time must post a general election notice of said election in the office of the drainage district. Prior to the time of posting such notices, the board of directors must appoint three judges of election in each precinct, each of whom must be a land owner within such precinct, and one of whom shall act as the clerk of the election. If the board of directors fail to appoint judges or the appointees fail to attend at the hour designated for the opening of the polls on the morning of election, the voters of the precinct present at that hour will appoint one or more judges to supply the place or places of those absent. Any judge or clerk of election is authorized to administer and certify oaths required to be administered during the progress of an election; and before the opening of the polls, each judge and clerk must take and subscribe an oath faithfully to perform the duties imposed upon him by law. Any qualified elector of the precinct may administer and certify said oath. The polls must be opened at eight o'clock in the morning and be kept open until six o'clock in the afternoon of the date of election. After the closing of the polls, the judges of election must forthwith proceed to count the ballots and make returns of the results of the election to the board of directors of the drainage district, together with the ballots cast. The board of directors must meet at the office of the drainage district on the first Monday after an election and canvass the returns. The board must declare elected the person receiving the highest number of votes for each office, and

must declare the result of the vote on any question submitted to the voters. In the event that at any regular or special election two or more persons shall receive the same number of votes, and one is elected thereby, the election must be determined by lot under the direction of the county judge of the county in which the office of the drainage district is kept. When the result of the election has been declared, the secretary must make a proper record entry thereof, deliver to each person elected a certificate of election, and such declaration of the result of the election must be filed with the county clerk of the county in which the office of the district is located.

In case of a vacancy in the board of directors from any cause, the board of county commissioners of the county wherein the office of the district is located shall appoint a director to fill the vacancy until the next regular district election, and until his successor is elected and qualified.

The county treasurer of the county in which the office of the drainage district is kept is ex-officio treasurer of the drainage district, and is liable, on his official bond, for the safety and disbursement of the funds of the district which may come into his hands. Such treasurer must collect, receive and receipt for all moneys belonging to the district, and must collect and receipt for all assessments levied in manner provided by law at the same time and upon the same receipt as is required in the collection of taxes upon real estate for county purposes. The county treasurer of each county comprising a portion only of the drainage district must, on the first Monday of each month, remit to the treasurer of the district all moneys belonging to the district.

The board of directors is authorized to pay all legal claims against the district by warrants drawn on the district treasurer. The treasurer can pay out the funds of the district only upon warrants ordered by the board of directors, signed by the president and attested by the secretary, under the seal of the district. When a warrant is presented to the treasurer and there are no funds in his hands to pay the same, he must stamp the same in the

same manner as an ordinary county warrant, and the warrant thereafter draws interest at the rate of six per cent. per annum from the date of presentation until payment.

All claims against the district must be verified in the same manner as claims against counties, and the directors and the secretary of the district will administer oaths to the parties verifying said claims. The treasurer must keep a register in which he must enter each warrant presented for payment, giving the date and amount of the warrant, to whom payable, the date of presentation for payment, the date of payment, and the amount paid, and all warrants must be paid in the order of their presentation for payment, and when paid must be cancelled. All warrants must be drawn payable to the claimant or bearer. The secretary of the district must likewise keep a registry of all warrants drawn by the board of directors, showing the date, amount, name of payee and for what purposes drawn, and no warrant may be issued except upon an itemized voucher duly verified, stating the services rendered or material furnished the district and by whom ordered or contracted. At each regular meeting of the directors, and oftener if required, the treasurer must report in writing the amount of money on hand, the amount received since his last report, and the amounts paid out, with a list of warrants presented since the last report, and such report must be sworn to and filed with the secretary.

As soon as the plans for a drainage system shall have been determined, and before the actual work of drainage is begun or bonds voted, the board of directors must proceed to make special assessments for benefits by classifying the lands in the district, in tracts of forty acres more or less, according to the legal or recognized subdivisions, on a graduated scale, to be numbered according to the benefits to be received from the contemplated drainage. The tracts of land which will receive most or about equal benefits must be marked 100, and such as are adjudged to receive less benefits shall be marked with a less number, denoting their per cent. of benefits. Such classification, when finally

established as provided by the drainage district law, shall remain as a basis for the levy of such taxes as may be needed for the lawful and proper purposes of the district. When classification has once been made and the board of directors find from experience that such classification was not or is not fairly adjusted on the several tracts of land according to the benefits, which may be adjusted by new or additional assessments, then the board of directors must disregard such former classification and make a new classification in accordance with justice and right. When the classification is complete, it must be properly tabulated or shown by a map or by both methods and must then be filed in the office of the secretary of the district for inspection. The board of directors must cause to be personally served upon all parties owning land to be affected by the proposed drainage system, or other property liable to be taxed under the drainage act, and residing in the district, a written or printed notice of the time when and place where they will meet and hear objections that may be made to such classification of lands on such graduated scale, which notice must be served, in the case of residents in the district, not less than three days before the time set for hearing, by delivering a copy thereof to the party to be served, or in the event that such copy cannot be personally delivered to the party to be served, then such notice must be served in the manner provided for the service of summons in the Colorado Code of Civil Procedure, and the board of directors must cause to be sent by mail at least ten days before the time set for said hearing such notice, to all owners who do not reside in the district whose land is to be affected, in case their postoffice addresses are known to the board of directors or any of them, or can be ascertained by the use of reasonable diligence, and in case the land of any non-resident or of any one whose residence is unknown is to be affected, then publication shall be made in some newspaper published in the county for three successive weeks prior to the time of such hearing, and the publication must be made after a resolution of the board of directors has been duly passed determining the names of those land owners within the dis-

trict who are non-residents of the state or whose residence is unknown. The hearing of such objections may be adjourned from day to day by public announcement by the board of directors made at the meeting until all objections are heard. Proof of posting and service of such notice may be made by affidavit and proof of publication by the certificate of the publisher of the newspaper.

At the time of meeting for review, the board of directors must hear whatsoever objections may be urged by any person interested, and if satisfied that any injustice has been done in the classification, they must correct the same in accordance with what is right, but if not so satisfied, they shall adopt the classification as originally made. Any person bringing and urging objections, who is dissatisfied with the decision of the board of directors, may appeal from their decision to the county court of the county in which the lands affected are situated, within ten days after the decision of the board of directors, by filing with the county clerk a bond with security conditioned to pay such taxes as may finally be levied upon the land in question and the costs occasioned by the appeal, in case the board of directors shall be sustained by the appellate court.

Appeals taken to the county court must be heard within the same or the next succeeding term. The county court must summon six land owners living outside of the drainage district and who are not interested in the lands or work of the district or of kin to any of the parties, to meet at the court house at the time set by the court for hearing any appeal or appeals that may be taken from the decision of the board of directors. Such land owners must be men who have some knowledge of the cost and benefits of farm drainage, and must be sworn as a special jury to try the case on appeal. The law makes provision for challenges and for filling vacancies in such jury. The court must lay before such jury the classifications as determined by the board of directors, and shall examine the same and hear allegations and testimony in opposition to or in support of the same, and may, if requested by either party to the appeal, visit the district and view the lands. The jury may

make a re-classification or may confirm the classification as made by the board of directors. Their final determination shall be made in writing and filed with the court and must be made a part of the district records.

If either party to such appeal shall be dissatisfied with the decision rendered by the special jury, the county judge may hear reasons for or against a further appeal to the district court of the judicial district in which the district is located, and he may in his discretion grant or refuse such appeal. If further appeal be not prayed for or be refused by the county judge, then the decision rendered by the special jury in the county court shall be conclusive and final. If appeal to the district court be granted, the classification as fixed by such district court shall be final. The district court must cause to be sworn six jurors qualified as required on appeal to the county court, and the appeal must be tried in the same manner as in the county court, or as nearly as may be, and the decision of such jury shall be conclusive and final, and no further appeal is permitted. The classification as determined and fixed by the district court must be entered as a part of the records of the drainage district, and thereafter shall be the basis upon which assessments for benefits shall be made. The taking of an appeal shall not operate to delay the collection of any taxes from which no appeal has been taken, nor delay the progress of the drainage work or the issuing of any bonds. The board of directors must make the classification conform to the requirements established by any hearing, original or by appeal, and the classification of lands as so established must be certified and filed with the clerk of each county in which any portion of the district is located.

The board of directors, on or before the first day of July in each year, must determine the amount of money required to meet the current expenses of the coming year, including cost of construction, maintenance, operating and ordinary expenses, deficiencies in the payment of expenses already incurred and upon interest unpaid, the amount of bonded indebtedness and the principal or interest which shall fall due during said coming year, and by resolutions

shall order such amount of money to be raised by special assessment upon the lands of the district as may be necessary to raise the sums of money so determined, and such amount shall be apportioned among the several tracts of land in the district in the name of the owner when known, according to the acreage of each and its figure of classification on the graduated scale, so that each tract of land may bear its equal burden in proportion to benefits. The board of directors must make out a special assessment roll designated as the tax list, setting down in separate columns the owners' names when known, and when unknown stating unknown, a description of the land, the number denoting the classification, and the taxes; that for current expenses and that for bonded indebtedness and interest thereon in separate columns. When completed, the list shall be filed with the secretary of the district. The assessment list must be completed on or before the fifteenth day of July, and on the first Tuesday of August in each year and from day to day thereafter, Sundays excepted, the board of directors must sit to hear complaints and to correct errors in said assessment, until all complaints filed with the secretary or presented to the board shall have been heard and determined. The classification of lands as fixed on the graduated scale shall not be changed at said hearing.

On or before the first day of September in each year, the secretary must transmit to the county assessor of each county in which any portion of the land within the district is located, a certified copy of so much of said assessment book as relates to land within the county of said county assessor, together with a certified copy of the order of the board of directors, and the county assessor must attach his warrant for the collection of said amounts and deliver said certified copy and said warrant to the county treasurer of his county at the same time that the tax roll of the county is delivered, and the county treasurer must collect said assessments as taxes are collected, as a part of the tax roll for the year. The drainage district secretary must deliver the assessment book duly certified together with a certified copy of the order of the board of directors levying

the assessment, to the district treasurer of the drainage district. The laws of the State of Colorado for the collection of general taxes, including the laws for the sale of property for taxes and the redemption of the same, apply and are effective for the purposes of the drainage district act, and the provisions of said act for collecting drainage district taxes shall be deemed and construed to be for the purpose of carrying into effect the police powers of the drainage district act for the construction and maintenance of drainage systems, and shall not be construed as imposing a special tax under the taxing power.

After adopting a plan for a drainage system and providing for the payment of the same or a designated part thereof by assessment or bonds, the board of directors must give notice by publication not less than twenty days in a newspaper published in the county where the office of the drainage district is kept, and in such other newspaper as may be deemed advisable, calling for bids for the construction of said work or any portion thereof. The notice must set forth where the plans and specifications may be seen, and that sealed proposals will be received at the office of the drainage district, and that a contract will be let to the lowest responsible bidder, giving the time and place for the public opening of proposals. The board of directors may enter into a contract with the lowest responsible bidder for the construction of the whole or any portion of the work mentioned in the notice, or may reject any and all bids and re-advertise for proposals, and may proceed to construct the work under the supervision of the board of directors, and in that event all material shall be purchased from the lowest responsible bidders after proposals have been invited and notice thereof published as aforesaid.

The person or persons to whom a contract may be awarded must execute a bond in the penal sum of not less than ten per cent. of the contract price, with surety to be approved by the board of directors, and conditioned for the faithful performance of the contract. All work must be done under the direction of and to the satisfaction of

the engineer employed by the drainage district, subject to the approval of the board of directors.

The board of directors may, without advertising for bids as aforesaid, enter into a contract or contracts either with the State of Colorado or with the United States of America, or with the State of Colorado and the United States of America jointly, for any and all surveys, plans and specifications for a proposed drainage system, and also for the construction, in whole or in part, of such system, such contract or contracts to provide for the payment by such drainage district to the State of Colorado or the United States of America, or both, as the case may be, of the actual cost of making such surveys, plans and specifications, and the actual cost of the construction of such drainage system, by the levy and collection of assessments at such times and in such amounts as shall be agreed upon in such contract or contracts; but no such contract can become effective or binding upon the district until the question of making the same shall have been approved by the qualified electors of the district at an election held for such purpose.

For the purpose of constructing a drainage system and necessary works for any drainage district, and acquiring the necessary property and rights therefor, and for the purpose of paying the first year's interest upon bonds authorized, and for the purpose of otherwise carrying out the provisions of the drainage district law, the board of directors may estimate and determine the amount of money necessary to be raised for such purposes, and may call a special election at which election shall be submitted to the electors of the district possessing the qualifications prescribed by law, the question whether or not the bonds of the district shall be issued in the amount so determined. A notice of such election must be given by posting notices in three public places in each election precinct in the district for at least twenty days, and by publication in some newspaper published in the county where the office of the district is required to be kept, once a week for at least three successive weeks. The notice must specify the time of holding the

election, the amount of bonds proposed to be issued, and the election must be held and the result thereof determined and declared in all respects as nearly as may be in conformity with the provisions of the drainage district law governing the election of directors. No informalities in conducting the election shall invalidate the same if the election shall have been otherwise fairly conducted. At the election the ballots shall contain the words, "Bonds—Yes" and "Bonds—No." If a majority of the votes cast is "Bonds—Yes," the board of directors must immediately cause bonds in the designated amount to be issued, payable in series as follows: At the expiration of eleven years, not less than five per cent. of the whole amount of said bonds; at the expiration of twelve years, not less than six per cent. of the whole amount of said bonds; at the expiration of thirteen years, not less than seven per cent. of the whole amount of said bonds; at the expiration of fourteen years, not less than eight per cent. of the whole amount of said bonds; at the expiration of fifteen years, not less than nine per cent. of the whole amount of said bonds; at the expiration of sixteen years, not less than ten per cent. of the whole amount of said bonds; at the expiration of seventeen years, not less than eleven per cent. of the whole amount of said bonds; at the expiration of eighteen years, not less than twelve per cent. of said bonds; at the expiration of nineteen years not less than fifteen per cent. of the whole amount of said bonds, at the expiration of twenty years a percentage sufficient to pay off the remainder of said bonds. The several enumerated percentages are of the entire amount of the bond issue. Each bond must be payable at the given time for its entire amount, and not for a percentage. The bonds shall bear interest at a rate not exceeding six per cent. per annum, payable semi-annually on the first day of June and December of each year. The principal and interest must be payable at the office of the county treasurer of the county in which the organization of the district was effected, and may be payable at such other place as the board of directors shall designate. The bonds shall be in the denomination of one hundred dollars or five hundred dollars, negotiable in form,

executed in the name of the district and signed by the president and secretary, with the seal of the district thereto affixed. The bonds must be numbered consecutively and bear date the day of their issue. Coupons for the interest must be attached to each bond, bearing the lithographed signatures of the president and secretary. The bonds must, on their face, recite, that they are issued under the authority of the drainage district law, stating its title, and date of approval. The secretary must keep a record of the bonds sold, their number, date of sale, the price received and the name of the purchaser. The district may, however, by a majority vote of its legal electors, provide for the issuance of bonds that will mature in any number of years less than twenty and arrange for the payment thereof in series as above provided. The board of directors may sell the bonds from time to time in such quantities as may be necessary and most advantageous to raise the money to carry out the objects and purposes of the drainage district act. Before making any sale, the board must by resolution declare its intention to sell a specified amount of the bonds, stating the day and hour and place of sale, and shall cause such resolution to be entered in its minutes and a notice of the sale to be given by publication thereof at least twenty days in a daily newspaper published in the City of Denver, or in any other newspaper at discretion. The notice must state that sealed proposals will be received by the board of directors at the office of the drainage district, for the purchase of the bonds, on the day and hour named in the resolution. At the time appointed, the board must open the proposals and award the purchase of the bonds to the highest responsible bidder, but may reject all bids. The board in no event may sell any of the bonds for less than ninety-five per cent. of the face value thereof, and the bonds and the interest thereon must be paid from an annual assessment upon the real property within the drainage district, and the real property within the district, by the provisions of the law, must be and remain liable to be assessed for such payments as provided by said law.

When the money provided by any previous issue of bonds has become exhausted, to pay expenditures authorized by law, and it becomes necessary to raise additional money for such purpose, additional bonds may be issued upon submitting the question at a special election to the qualified voters of the district and otherwise complying with the provisions of law in respect to an ordinary issue of bonds.

The lien for taxes for the payment of the interest and principal of any bond issue shall be a prior lien to that of any subsequent bond issue.

The board of directors has the power of eminent domain in the location and construction of its drainage system, and such right of eminent domain is extended to cover railroad property, franchises and rights-of-way, and the drainage system and works may be constructed over state lands.

No director or officer of the district may be interested, directly or indirectly, in any manner in any contract awarded by the board of directors, or in the profits thereof; nor shall receive any bribe, and for any violation of this provision, such officer shall be deemed guilty of a felony and upon conviction shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the state penitentiary not exceeding five years nor less than one year, and such conviction shall work a forfeiture of his office.

In all actions, suits and judicial proceedings in any court of the State of Colorado, the court must take judicial notice of the organization and existence of any drainage district of the state from and after the filing for record in the office of the county clerk of the certified copy of the order of the board of county commissioners declaring the district organized. A certified copy of such order is prima facie evidence in all actions and suits and proceedings in any court of the State of Colorado of the regularity and legal sufficiency of all acts, matters and pro-

ceedings therein recited and set forth. Any drainage district which has complied with the provisions of law with respect to its organization and shall have exercised its rights under the law and with respect to which the regulation or legality of its organization shall not have been questioned by proceedings in quo warranto instituted in the district court of the county in which such district or the greater portion thereof is situated within one year from the date of the filing of the original certificate of organization, shall be conclusively deemed to be a legally and regularly organized, established and existing drainage district within the meaning of the drainage district act; and its due and lawful formation and organization shall not thereafter be questioned in any action, suit or proceeding, whether brought under the provisions of the drainage district act or otherwise.

Upon petition of the owner of a tract of land and the payment of a sum equal to the past due assessments upon the same after a classification thereof upon a graduated scale by the board of directors, as provided by law, so that such tract shall be upon an equal footing with other lands of the district, the board of directors may authorize the inclusion of any tract of land contiguous to the existing boundaries of the district and capable of being drained by said drainage system; thereupon such lands shall become liable for all future assessments which may become due or which may be levied for drainage purposes within the drainage district. The cost of any such proceeding for the inclusion of lands must be borne by the applicant.

The board of directors of the drainage district may commence special proceedings in the district court of the judicial district in which the office of the drainage district is kept, whereby the proceedings taken in connection with the issue and sale of the bonds of the district, either before or after the sale, may be judicially examined, approved and confirmed, such proceedings to be taken in conformity with the law regulating like proceedings for

the examination, approval and confirmation of irrigation districts and the bonds issued thereby.

Whenever the owners of lands which may require a combined system of drainage shall unanimously and mutually agree upon a system of drainage and the character of work necessary to be done to drain their lands, the amount of money each shall contribute toward said proposed works, they may reduce such agreement to writing, specifying the boundary lines of such voluntary district and the lands therein, in suitable tracts not exceeding 160 acres, giving the names of the owners and specifying the work proposed to be done, naming the district and naming three persons among their number who shall act as directors thereof until the annual election, and may agree upon any other lawful matter or thing which they may deem pertinent to the work proposed. Such agreement must be submitted to the board of county commissioners of the county wherein the major part of the land is proposed to be included where such district may be situated, and must submit therewith a plat of the land, giving a general description of the same. The board of county commissioners must, as soon as may be practicable, carefully consider all questions involved, make a personal inspection of the land proposed to be included in such voluntary district, or may employ some competent engineer or surveyor to examine the same and report to the board, the expenses to be borne by the parties to the voluntary agreement; and the board may require a deposit of funds sufficient to protect the county against expense. If the board of county commissioners be satisfied that the plan proposed is practicable, and will be conducive to the public health, convenience, utility or welfare, and that the agreement submitted is fair and equitable in all respects considering the benefits which the respective lands will receive from such voluntary drainage district, then the board of county commissioners must enter an order upon its records, approving the said agreement, and file the same in the office of the county clerk of said county, with the accompanying plat, and if such district extends into more than one county, a certified

copy of the agreement and plat, together with a certified copy of the order of the board of county commissioners, shall be filed by the parties to such agreement with the county clerk of such other county or counties, and thereupon said drainage district shall be fully organized and established, and shall have all the powers of drainage districts, and such directors so named in the agreement shall possess all the powers and proceed in like manner as may directors of districts organized by petition, and the agreement shall constitute a charter of authority for such voluntary district, and all lands subscribed to and voluntarily included in such district shall be considered as a unit or but one tract of land in the determination of any question or right or duty as between said voluntary district and any lands outside thereof, whether lying above or below said district or adjacent thereto.

Lands within the boundaries of any city or town organized and existing under the general laws of the State of Colorado, or under Article XX of the constitution thereof, requiring drainage in whole or in part and susceptible of drainage by the drainage ditch system of work or works of any drainage district or proposed drainage district may be included within and made a part of any such drainage district upon the presentation to the board of directors of the district or to the proper board of county commissioners, in case such district has not been organized, of a petition for such inclusion, signed by a majority of the owners of such lands, whether residents or non-residents of such city or town, as well as by the owners in the aggregate of the majority of the total number of acres of such land to be included, exclusive of the land occupied by public streets and alleys, public parks and any and all other lands owned by any municipality. The city or town must bear the expense of the drainage of all areas included within the streets, alleys, public parks or other lands owned by it, and the city council or board of trustees must annually make provision for tax levies for this purpose.

Whenever a majority of all owners of land within a drainage district, representing also a majority of the whole

number of acres of land within the district, shall petition the board of directors to call a special election for the purpose of submitting to the qualified electors of such drainage district a proposition to dissolve the district, the board of directors, upon proof that all claims and bills against the district, of every kind or nature whatsoever, have been fully paid and satisfied, must call an election for the purpose of submitting the question of dissolution to the qualified voters of the district, and must cause a notice setting forth the object of such election to be posted in the office of the district and in six public places within the district, and must cause the same to be published in some newspaper of general circulation published in each county in which any portion of the district may lie, for a period of thirty days prior to said election, which notice shall set forth the time and place for holding such election in each precinct within the district. The board of directors must prepare ballots to be used at such elections, on which shall be written or printed the words "For dissolution" and "Against dissolution," and must appoint judges and clerks of election as in other elections of the district. No district may be dissolved which shall have claims, bills, bonds or indebtedness outstanding or unpaid, and the attempted dissolution of such district shall be null and void. The board of directors must, upon the day specified in the notice of election as the day for canvassing the vote at such election, proceed to canvass the votes cast thereat, and if it shall appear from such canvass that a majority of the ballots cast at such election were "For dissolution," then the board of directors must forthwith make and enter in their records an order declaring the district to be duly dissolved and disorganized. Such order must contain a complete copy of the petition for dissolution, including the signatures thereto attached, and a duly authenticated copy of the published notice of such election, together with copies of the publishers' affidavits of publication, stating the election date and that on said election date the election was held; and shall state the number of votes cast for and against dissolution. And the board of directors must cause

a copy of such order, duly certified by the president and attested by the secretary, under the seal of the district, to be filed for record in the office of the county clerk and recorder of each county within which any portion of such district shall extend or lie. The county clerks and recorders must forthwith file and record said certified copies, whereupon such district shall be dissolved, and shall cease to exist. Should it appear, upon the canvass of the vote cast at said election, that a majority of the votes were against dissolution, then the board of directors must declare the proposition lost and must thereupon enter an order to that effect in the records of the district.

SYNOPSIS OF DRAINAGE LAWS OF FLORIDA

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Chapter 6458, Laws of Florida, 1913, known as the "Drane Drainage Law" because the bill which was enacted had been introduced in the State Senate by Hon. H. J. Drane, by request, said bill having been prepared after a careful study and consideration of the drainage laws of several States, by the author of the following analysis, is the first and only comprehensive law on the subject of the reclamation of wet and overflowed lands in the State of Florida by the organization and maintenance of Drainage Districts.

It is hoped that the following brief analysis of the said drainage law, under the authority of which many drainage districts have been organized, or are in course of organization, will be of assistance to all who may be interested in any way in the organization and maintenance of drainage districts in the State of Florida, whether as owners of lands, contractors interested in the construction of improvements in such districts, or as dealers or investors in bonds issued by any such drainage districts.

To organize and establish a drainage district under said Chapter 6458, Laws of Florida, it is necessary that a petition in writing be prepared and signed:

(a) By the Board of Drainage Commissioners of Florida.

(b) By a majority of the owners, or the owners of a majority of the acreage of any contiguous body of wet or overflowed lands or lands subject to overflow.

Such petition must state the name of the proposed drainage district, and the number of years it is to continue; the boundary lines of the proposed district; the names, so far as known, and the last known postoffice address of the owners of land in said district, with a general description of the lands and approximate acreage owned by each; that the owners of lands within such district whose names are signed to such petition are willing to and do obligate and bind the lands owned by them in such district to pay the taxes which

may be assessed against such lands respectively to pay the expense of organizing, and of making and maintaining improvements that may be necessary to effect the reclamation of said lands; and must contain a prayer that the lands therein described be declared a drainage district under said Act. Said petition must be filed in the office of the Clerk of the Circuit Court of the County in which such lands or the greater part thereof are situate.

Notice by publication, given immediately after the filing of such petition, by the Clerk in whose office same is filed, same to be published once each week for four consecutive weeks in some newspaper published in each county in which lands described in petition are situate, together with form of such notice, is provided by section two of said Act. Such notice must contain a description of the lands set out in the petition, and notify all persons interested therein that a petition asking that said land be formed into a drainage district under said Act, has been filed in the office of said clerk, and that said lands will be rendered liable to taxation to pay the expenses of organizing such district, and for making and maintaining the improvements necessary to effect the reclamation of said lands, and require all persons interested to appear on first rule day of said court not less than twenty days after such notice has been published four weeks, and show cause why such proposed drainage district should not be organized as a public corporation of the State of Florida.

Objections to the organization of such district may be filed by any land owner, who has not signed the petition, on or before the rule day stated in said notice. If objections are filed same are to be heard in a summary manner on a day to be fixed by the court or judge, either in term time or in vacation, and without unnecessary delay. Upon such hearing the court is required to overrule such objections and declare and decree such drainage district a public corporation of this State, if it shall be of opinion that:

(a) The establishment of said drainage district and the improvements to be made will be for the advantage of the owners of the lands therein;

(b) That same would be in the interest of the public health, convenience or welfare.

But no drainage district can be established without the written approval or consent of the owners of a majority in acreage of the lands in the proposed district.

If the court finds that the district should not be established the petition will be dismissed and the cost adjudged against the petitioners.

When a drainage district has been established by the Court, the Clerk is required to transmit to the Secretary of State a certified copy of the findings and decree of the Court incorporating same, which shall be filed in the office of such Secretary of State; a certified copy of such findings and decree, together with plat of the district is to be filed in the office of the Clerk of the Circuit Court in each of the Counties having land in such district.

The Clerk of the Circuit Court organizing a district is required to call a meeting of the owners of the lands in the district within twenty days after such district has been organized and incorporated, by causing notice thereof to be published for two consecutive weeks in a newspaper published in each county in which lands in the district are situate; such meeting to be held at some public place in the County in which the district is organized, at a day and hour named in notice which shall not be less than ten nor more than fifteen days after the last insertion of such notice in newspaper; the land owners at such meeting shall elect a Board of three supervisors, each of whom shall be owners of land in said district, and at least two of them shall be resident in a county or counties in which lands in district are situate; in the election of such supervisors, each land owner is entitled to cast one vote for each and every acre of land owned by them in said district. Voting may be in person or by proxy. The said supervisors are elected for one, two, and three years, respectively, and their compensation, if they are to receive any, shall be fixed by the said land owners at such meeting, such compensation not to exceed \$5.00 per day, and expenses.

An annual meeting of the land owners in such district is required to be held, for the purpose of electing one super-

visor, and to fill vacancies. If a majority of the land in district is not represented at such meeting, no election can be held, and the Board of Drainage Commissioners of Florida are authorized to appoint supervisors. Vacancies, if any, may be filled by remaining supervisors, but if they fail for thirty days, the Board of Drainage Commissioners of the State may fill such vacancies.

Each supervisor is required to take an oath before entering upon his duties that he will honestly, faithfully and impartially perform the duties devolving upon him as such supervisor, and that he will not neglect same. The Board of Supervisors are required to meet and organize immediately after their election, electing one of their number president of the Board, and some suitable person as secretary of the Board, such secretary may or may not be a member of the Board, and is required to execute bond as the Board may require.

The Board of Supervisors is required to adopt a seal with suitable device, and to keep a record of all its proceedings in a substantially bound book, which shall be open to inspection by any land owner or person interested. The Board of Supervisors is required to make a report to the annual meeting of land owners of the progress made in the affairs of the district.

Within thirty days after organizing the Board of Supervisors is required to appoint a Chief Engineer for the district, who is required to execute bond with surety, conditioned that he will faithfully and honestly perform his duties and deliver to his successor all papers, maps, etc., belonging to district.

The Chief Engineer, with assistants named by him with the approval of the Supervisors, is required to make surveys and do all engineering work, and make a report in writing to the Board of Supervisors, with maps and profiles, containing a full and complete plan for draining and reclaiming the lands described in the petition or adjacent thereto, with the length, width and depth of canals, ditches, dykes, levees, etc., and other works necessary; also an estimate of the cost of carrying out and completing the plan of recla-

mation, including cost of superintending same and all incidental expenses.

Upon receipt of the final report of the Chief Engineer relating to such survey of lands, the Board of Supervisors are required to adopt such report or any modification thereof approved by such engineer, and such report or modification thereof shall thereafter be known as the "plan of reclamation," which plan shall be filed with the Secretary of the Board of Supervisors, and copied into the records of the district.

The Board of Supervisors are authorized to levy a uniform tax not exceeding fifty cents per acre upon each acre of land within the drainage district to be used to pay expenses in organizing the district, making surveys and assessing benefits and damages, and to pay expenses necessarily incurred before said Board is authorized to provide funds to pay the total costs of works and improvements of the district. Lands annexed to the district by extending the boundary are to be assessed a like uniform tax. Such uniform tax is due and payable immediately after the levy thereof and becomes delinquent ninety days thereafter. Said tax is committed to and collected by the Tax Collector of the County, who is required to collect same and pay same, less his commission of 1%, to the Treasurer of the District. Said tax is made a lien upon the land against which it is assessed. If it is thereafter determined by the Commissioners appointed by the Court that any lands upon which such uniform tax has been paid, will not be benefited by the improvements to be made by such district, then the uniform tax so paid shall be refunded and paid to the person paying same.

Within twenty days after the adoption of the "plan of reclamation" the Secretary of the Board of Supervisors is required to file a certified copy thereof in the office of the Clerk of the Circuit Court organizing the district, and at the same time the Board of Supervisors is required to file a petition with said Clerk asking the judge of the said court to appoint three commissioners, who must not be owners of land within the district nor of kin within the fourth degree of consanguinity to any owner of land in the district, whose

duties are to assess benefits and damages accruing to lands in the district by reason of the execution of the "plan of reclamation." The said commissioners, who must be freeholders and residents of Florida, are required to take and subscribe to an oath to faithfully and impartially discharge their duties and make a true report of the work done by them.

Said commissioners are to be furnished with a copy of the "plan of reclamation," with maps, profiles, etc., and the Secretary of the Board of Supervisors or his deputy, and the Chief Engineer or one of his assistants are required to accompany said commissioners, and they must proceed to view the premises, and they shall assess the amount of benefits, and the amount of damages also, if any, the value of lands required for rights of way, etc.; also the benefits to accrue to any public highways, railroad and other rights of way, from carrying out and putting into effect the "plan of reclamation," but in assessing such benefits to any governmental lot, forty-acre tract or other subdivision, or rights of way, said commissioners are only to consider such benefits as will be derived from the construction of the works and improvements set out in the "plan of reclamation" or as the same may afford an outlet for drainage or protection from overflow of such property. Due credit is to be given to canals already cut, etc., which may afford partial or complete protection to any tract or parcel of land in the district, etc. Said commissioners are required to make a report of their findings, which shall be prepared by the Secretary of the Board of Supervisors under the supervision and direction of the attorney for the district. The commissioners are to be paid \$5.00 per day and necessary expenses in addition thereto. In case the report of said commissioners contains assessment of benefits and damages to lands not included in the district, it is made the duty of the Board of Supervisors to file a petition for the extension of the boundary lines so as to embrace all lands that will benefited.

Notice of the filing of the report of said commissioners is to be given by the Clerk of the Circuit Court organizing the district, in whose office the same is required to be filed;

such notice is directed to all persons interested in the lands in the said district which are to be described in said notice, and such persons are notified that the commissioners appointed to assess benefits and damages, etc., have filed their report, and that they may examine such report and file exceptions to all or any part thereof on or before the first rule day of said court after the lapse of ten days from the last publication. Said notice is also to be published in each county in which lands in the district are situate.

Exceptions to such report of the commissioners are to be heard by the court in a summary manner so as to carry out liberally the purposes and needs of the district; if any or all of such exceptions are sustained the court is required to order the report changed to conform to its findings, and shall then approve and confirm same; if no exception filed, or if it is shown upon the hearing of all said exceptions that the estimated cost of construction of improvements contemplated in the "plan of reclamation" is less than the benefits assessed against the lands in the district, the court is required to approve and confirm the commissioners report.

The court is required to condemn any land or other property needed for rights of way or that may be needed in the construction of such works, following the procedure that is provided by law in condemnation of land taken for railroads; but it is provided that any property owner may accept the assessment of damages in his favor made by the commissioners or acquiesce in their failure to assess damages in his favor, and shall be construed to have done so, unless notice in writing be given to the Board of Supervisors on or before the time for filing exceptions has expired, that he demands an assessment of his damages by a jury, in which case the Supervisors must file an action to condemn such lands, with the right to pay into court a sum to be fixed by the circuit court or judge, and proceeding with the work before the assessment by jury. An appeal may be prosecuted from the judgment of the circuit court to the Supreme Court within twenty days after rendition of such final judgment, and upon such appeal there may be determined: First, whether just compensation has been allowed for property

appropriated; and, second, whether proper damages have been allowed for property prejudicially affected by improvements to be made.

Certified copy of decree confirming commissioners report is furnished the Secretary of the Board of Supervisors, and also to the Clerk of the Circuit Court in each county in which lands in district are situate, to be filed and become a permanent record.

The commissioners report having been confirmed, the benefits assessed against the several tracts or parcels of land become the valuation upon which all taxes for the cost of improvements in district are to be based, which valuation is not subject to change; it is therefore of the highest importance that such assessment be as nearly equitable as is possible to make, and hence the importance of selecting honest and capable men to act as such commissioners.

Upon the benefits which have been assessed the Board of Supervisors are required to levy a TOTAL TAX, same to be such portion of the benefits assessed to all lands in district as may be found necessary to pay the costs of the completion of the improvements contemplated by the "plan of reclamation," and the carrying out of the objects of the district, and ten per cent. thereof in addition thereto for emergencies, and in case bonds are issued to procure funds, the interest which will accrue thereon shall be included in the levy of such total tax. Said total tax must be apportioned to and levied upon each tract in the district in proportion to benefits assessed thereto, but not in excess of such benefits. State lands are to be assessed and taxes thereon paid out of funds derived from sale of State lands. Total tax so levied to be made into well bound book to be endorsed and named "DRAINAGE TAX RECORD OF ——— DRAINAGE DISTRICT, ——— COUNTY, FLORIDA," and same to be certified by the President and Secretary of the Board of Supervisors, attested by the seal of the district, and to become a permanent record in the office of the said Secretary.

The Board of Supervisors of each drainage district is required to, each year after such Total Tax has been levied,

determine, order and levy the annual installment of such total tax, as shown by the Tax Record, which shall become due and collectible during said year at same time State and County taxes are due and collectible, which annual installment of tax, and such maintenance tax as may be levied, shall be certified to the Tax Collector of each County in which lands in district are situate, not later than November 1st, the form for certificate committing same to Collector being provided by the statute. Said taxes are to be shown in tabular form, giving names of owners with description of lands set opposite thereto; the amount of said annual installment of tax levied on each tract or parcel of land, and the amount of maintenance tax. Such taxes so tabulated and certified to be prepared in well bound book, endorsed and named "DRAINAGE TAX BOOK,———DRAINAGE DISTRICT,———COUNTY, FLORIDA, FOR THE YEAR 191—."

It is made the duty of the Tax Collector of each county in which lands of any drainage district are situate, to receive the DRAINAGE TAX BOOK each year, and it is made his duty to promptly and faithfully collect the tax therein set out and to exercise all due diligence in so doing, and to demand and collect such tax at same time he demands and collects State and County taxes on same lands. It is made his duty to make return of such DRAINAGE TAX BOOK immediately after the first Monday in April each year to the Secretary of the Board of Supervisors, and to pay over and account for all moneys to the treasurer of the district, verifying the return of his book by affidavit. A DRAINAGE BACK TAX BOOK is to be then made up and certified by the said Secretary to the Collector. The Collector is required to execute bond to the Board of Supervisors to be approved by it, in a sum double the probable amount to be collected by him in any one year, conditioned that he will pay over and account for all taxes collected by him according to law.

Taxes not paid become delinquent after the first Monday in April of the year for which levied, and bear a penalty thereafter of two per cent per month until paid. A

County Collector who refuses, fails or neglects to make payment to treasurer as required by law is required to pay a penalty of ten per cent on amount of delinquency. Such collector receives one per cent on current taxes and two per cent on delinquent taxes collected by him.

All drainage taxes, with penalties for default in payment thereof, and all costs in collecting same, including a reasonable attorney fee to be taxed as costs, in action brought to enforce payment, is made a lien upon all the lands against which assessed, to which only the lien of the State for general State, County, School and road taxes, shall be paramount. Such lien is to be evidenced by certificate of the Secretary of the Board of Supervisors, and filed as a permanent record in the office of the Clerk of the Circuit Court in each County in which lands in district are situate.

The liens for drainage taxes must be enforced by action in corporate name of district, on delinquent tax bills made and certified by County Collector, in Circuit Court of County in which land situated, within twelve months after taxes become delinquent; such actions to be against lands on which tax has not been paid. Pleadings, process, proceedings, practice and sales to be same as in other actions to enforce mortgage or other liens on real estate. Sales to be made by Collector or by Commissioner appointed by Court, and deeds to purchaser given same probative effect as deeds executed under judgments and decrees in other civil actions. If district fails to commence suit within ninety days after taxes become delinquent the holder of any bond or bonds of the district is given right to bring such suit for collection of such taxes, making the district a party defendant. All suits to be in chancery, and said proceedings, judgment or decree is in nature of proceeding in rem, and judgment or decree to be enforced wholly against such lands. All or any part of lands situated in one County on which taxes are not paid may be included in one suit for collection of such delinquent taxes; notice of such suit shall be published for four weeks before decree of sale entered, form of notice provided by statute. The title

acquired by reason of sale of lands for such drainage taxes shall be subject to lien of all subsequent annual installments of taxes. Proceeds of sale shall be paid to treasurer of district, and any surplus after payment of taxes, penalties, costs and attorney fees, are to be paid over to, or held subject to order of defendant, as may be ordered in decree for sale. All such sales to be made to highest bidder, for cash in hand, at public outcry, at Court House door, after notice of same published for two weeks in newspaper. Sales may continue from day to day until completed; and proper deeds to be executed conveying to purchasers lands sold, and title to said lands thereafter to become vested in such purchaser as against all others whomsoever, subject to the lien for subsequent drainage taxes, and saving to infants and insane persons having no guardian or curator the rights now given them by law. Any land owner given one year in which to redeem land sold for drainage taxes.

Suits to enforce lien for drainage taxes may be disposed of on oral testimony, and the law shall be liberally construed so as to give to said lien for drainage taxes the effect of a bona fide mortgage for valuable consideration, and a first lien upon all said lands against all persons having interest therein.

If amount due, including costs and penalties is not bid at sale of land, collector or commissioner making sale is required to bid whole amount due thereon in name of district, and same shall be sold to the district, and deed shall be executed conveying same to the district, such lands to be held and disposed of by the Board of Supervisors as the interest of the district may demand. Judgment or decree for sale of such lands to provide for payment of State and County taxes thereon.

The Treasurer of the district is elected by the Board of Supervisors, and is required to execute bond for the faithful performance of his duties, etc. In case bonds are issued, some bank or trust company may be selected as temporary treasurer to handle the proceeds of bonds, if Board of Supervisors so desire. All moneys to be deposited in bank and paid out only upon warrants of the district

The Board of Supervisors must within thirty days after organizing employ an attorney to have charge of all legal matters for the district, and to advise the said board and officers and agents of the district in all legal matters. Contract of employment to be in writing and specify the amount to be paid attorney for services and expenses.

The Board of Supervisors may, if in their judgment it seems best, issue bonds not to exceed 90% of the Total taxes levied, in denominations of not less than \$100 and bearing interest not to exceed six per cent. per annum, payable semi-annually, to mature at annual intervals within thirty years, commencing not later than ten years, both principal and interest to be payable at some convenient bank or trust company. Bonds are to be delivered to the treasurer and sold at not less than 95 cents on the dollar, and interest, as the board of supervisors may deem necessary. A sufficient amount of the drainage tax shall be appropriated to pay the principal and interest of the bonds, which shall be preserved in separate fund for that purpose. In case the total tax levy made shall not be sufficient to pay principal and interest on all bonds issued, the Board of Supervisors are required to make additional levy on benefits assessed sufficient for that purpose, but no tax levies are to be made that will in any way impair the security of such bonds, or the fund available for the payment of the principal and interest thereof. The funds derived from the sale of bonds shall be used to pay the cost of drainage works and improvements, and such costs, expenses, fees and salaries as may be authorized by law and for no other purpose.

The Board of Supervisors are authorized to carry out and maintain the "plan of reclamation," and to do so may employ men, teams and purchase machinery, etc., or they may, in their discretion let the contract for such works and improvements either in whole or in part; the business affairs of the district and its management are in the hands of the Board of Supervisors, just as the affairs of a private corporation are in the hands of a board of directors. They are required to make the annual levy of tax, and see that same is collected, so long as it may be necessary to pay any

bond issued or obligation contracted, and the making of such assessment and the collection of such taxes may be enforced by mandamus.

The total tax levied and assessed against any tract or parcel of land may be paid in full within a time to be fixed by the Board of Supervisors, less any amount included therein to meet interest payments, and in such case such tax assessment is satisfied and to be endorsed "Paid in Full," but this does not release such land from further payment should it be found necessary to make further assessments upon the benefits assessed to pay the costs of the improvements made in the district or the obligations incurred, after the Total Tax first levied has been exhausted.

SYNOPSIS OF ILLINOIS DRAINAGE LAWS

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Illinois has several different forms of drainage districts. There are two which are in the most general use. These districts are organized under what are commonly known as the "Levee Act" and the "Farm Drainage Act."

The "Levee Act" is the one that is most used in Illinois at the present time, for the reason that it has not been feasible to issue drainage bonds under the farm drainage act for some time, by reason of the fact that after all proceedings were had, the contract let, and bonds issued and sold, a land owner could let his taxes be returned delinquent and could try out in the County Court, upon objections filed to his taxes, the question as to whether his land was benefited to the amount of the assessment made against it.

At the last session of the Legislature of the State of Illinois, Section 27 of the "Farm Drainage Act" being Section 101, Chapter 42, HURD'S REVISED STATUTES, which had been repealed by the Legislature by an Act approved May 11, 1901, was re-enacted. This section provides that any person against whose land a tax has been levied, may, within ten (10) days after the tax list has been deposited with the Clerk of the drainage district, appeal to the County Court by filing a bond in double the amount of the tax appealed from in the County Clerk's office, but the appeal shall be upon the ground only that such tax is a greater amount than the benefits to accrue to the land in question by the proposed drainage. This section will do away with the right of the land owner to allow his taxes to be returned delinquent, and to raise the question, at that time, as to whether his lands are not benefited to the extent of the assessment, and will force the land owner to try out the question of benefits before the contract is let and before bonds have been issued, and will make the bonds issued by the districts of this kind once more attractive to investors.

ORGANIZATION OF DRAINAGE DISTRICTS

In order to organize a drainage district under the Levee Act, it is necessary that a petition be filed signed by a majority of the owners of land within such proposed district, who are of legal age, and who represent one-third in area of the lands proposed to be benefited by said work, or that the said petition be signed by one-third of the owners of land of the said proposed district who have arrived at lawful age, and who represent a major portion in area of the lands proposed to be reclaimed or benefited. This petition must set forth the proposed name of the said drainage district, the necessity of the same, with a description of the proposed starting points, routes and termini of the work, and a general description of the lands proposed to be affected.

After the petition is filed in the office of the County Clerk of the County in which a major portion of the land lies, the Clerk of said County Court shall cause three (3) weeks' notice of the presentation and filing of said petition to be given, addressed to all persons interested, by posting notices thereof at the door of the Court House in the County or Counties in which the district is situated, and in at least ten (10) of the most public places in said proposed district, and also by publishing a copy thereof at least once a week for three (3) successive weeks in some newspaper or newspapers published in the county from which the larger part of said district is proposed to be formed. This notice shall state when and in what Court said petition was and is filed; the starting point, route and terminus and general description of the proposed work; the boundaries and name of the proposed drainage district; and at what term of said court the petitioners will ask a hearing on said petition. If any of the land owners of the said district are non-residents of the county or counties in which the proposed district will lie, the petition shall be accompanied by an affidavit giving the names and places of residence of such non residents, if known, and if unknown, stating that, upon

diligent inquiry their places of residence cannot be ascertained; and the Clerk of the County Court in which the petition is filed shall send a copy of the notice addressed to each of said non-residents whose residence is known, within three (3) days after the first publication of the same.

On the day set for the hearing on the petition it is the duty of the Court to hear and determine whether or not the said petition contains the signatures of the proper number of land owners, and if it appears to the Court that the proposed drain or levee or other work is or are necessary or will be useful for the drainage of the lands proposed to be drained thereby, for agricultural, sanitary or mining purposes, the Court shall so find, and appoint three (3) competent persons as Commissioners, each of whom shall hold his office until his successor is appointed.

Before entering upon the duties of their office said Commissioners shall take and subscribe the statutory oath and shall then elect one of their number chairman and may elect one of their number as Secretary.

Immediately after their appointment the Commissioners shall examine all the land proposed to be drained or protected and the lands over or upon which the work is proposed to be constructed, and shall determine whether the starting point, route and terminus of the proposed work and the proposed location thereof is feasible, and if not, what is feasible; the probable cost of the work mentioned in the said petition, including all incidental expenses, and the cost of the proceedings therefor; the probable annual cost of keeping the same in repair; what lands will be benefited by the construction of the proposed work, and whether the aggregate amount of benefits will equal or exceed the cost of the construction of the said work, including all incidental expenses, costs of proceedings and damages; whether the proposed district as set out in the petition filed will embrace all the lands that will be damaged or benefited by said proposed work, and if not, what additional lands will be so benefited; and in case the prayer of the petition is for the purpose of repairing or

maintaining a levee or levees, ditch or ditches heretofore constructed under any law, it shall be the duty of the commissioners to examine the said levee or levees, ditch or ditches and the lands intended to be reclaimed thereby, and to make a report to the Court as to whether or not in their opinion such levee or levees, ditch or ditches can with proper repairs be made sufficient to protect said lands from overflow from high water, or to drain the same; the probable annual expense of keeping the same in repair; what lands will be benefited, and the aggregate amount of benefits; and whether the district embraces all the lands that will be benefited by the maintenance of such levee.

At the time the Court appoints the said commissioners, the Court fixes upon a time for them to make their report, and after the commissioners file their report in Court, the Court thereupon sets the report for hearing at a time not less than ten (10) days nor more than four (4) weeks after the filing of said report. No further notice is given about this matter, unless some additional lands are taken into the said drainage district. In the event that additional lands are taken in, it is necessary that three (3) weeks' notice be given in the same manner as notice is given upon the filing of the petition to the land owners whose lands are proposed to be added.

This report made by the commissioners is merely advisory, and the Court itself can make any changes that it deems necessary, or can refer the report back to the commissioners in order that changes may be made. If, after hearing all objections, if any, to the report of the commissioners, and all applications, if any, to annex other lands to the proposed district, the Court finds that a drainage or levee district should be organized, the plat of the same shall be recorded and an order be made organizing the district.

This order is final and appeals or writ of errors can be prosecuted from it to the Supreme Court of the State of Illinois. The granting of an appeal or writ of error to one or more persons and the reversal of such order upon the writ of error or appeal by such persons shall not impair nor

invalidate said organization as to all other persons not appealing nor suing out such writs.

After the order is entered organizing the district, it is the duty of the commissioners to proceed to procure the necessary right of way. If they cannot procure all of the necessary right of way, then it is their duty to make a report to the Court to that effect. It is also the duty of the commissioners to make out the "Commissioner's Roll of Assessments of Benefits and Damages" and file the same in the office of the Clerk of the County Court. After the same is filed, the commissioners give ten (10) days' notice as to the filing of this assessment roll in the same manner as notice is given upon the filing of the petition for the organization of the said drainage district.

Upon the filing of the assessment roll with the Clerk of the Court, a jury is drawn by the Clerk before whom the question of benefits and damages will be tried. This jury is drawn in the manner as provided by the Eminent Domain Act of the State of Illinois; that is: The Clerk selects the names of sixty-four (64) disinterested freeholders, and in the presence of two (2) disinterested freeholders, and the names of twelve (12) men, who are to serve as the jury. Upon the hearing every land owner has a right to appear and object to the confirmation of the assessment roll, and to object to the jurors in the same manner as in other civil cases in the County Court. Upon any vacancy occurring in the jury, the Judge before whom the case is tried designates by name freeholders, and a venire is issued to be served upon such freeholders designated, commanding them to appear and fill the vacancies on the jury.

If any person interested demands, the jury goes out over the lands of the district and has the power not only to lower the assessment on the lands of the persons who object, but has a right to modify the entire assessment roll. The only limitation which exists as far as the jury is concerned is they must not assess any tract of land more than it will be benefited by the proposed improvement. The jury in their verdict also assess damages for rights of way, the release of which have not been obtained by agreement.

At the time the verdict of the jury and the assessment as made by them is confirmed by the County Court, the Court can divide the assessment into installments, all of which draw interest at the rate of six per cent. (6%) per annum from the date on which the assessment roll is confirmed.

It is then the duty of the County Clerk to make out a certified copy of such assessment roll and transmit the same to the commissioners. The commissioners upon receiving such certified copy of the said assessment roll, or the treasurer of said district, shall immediately cause a notice to be published for three (3) weeks in the manner required as to notice given upon the filing of the petition for organization, which notice sets out the time when the various installments will be due.

If the assessment or any installment or installments thereof, or annual amount of benefits due upon said lands, shall not be paid on or before the day named in the notice, it shall be the duty of the said commissioners, or their treasurer, to make out a certified list of such delinquent lands upon which the assessment or any installment remains unpaid, and the same shall be by him or them, on or before the 10th day of MARCH next after the same have become payable, returned to the county collector of the county or counties in which said lands shall lie. It is then the duty of the county collector to whom any such returns have been made, to transfer such returns to the tax books in his hands, setting down thereon in proper order the several tracts of the real estate, town lots and blocks so returned, and setting opposite to the respective tracts of real estate in proper columns prepared for that purpose, the amount of the installment, and the like proceedings shall be had, and with the like force in the collection of such delinquent assessment or assessments, as in ordinary collections of State and county taxes by the county collectors, and of sale of real estate by them for such non-payment, and of redemption from such sales.

After the assessment has been confirmed, the commissioners under the provisions of Section 36, Chapter 42,

HURD'S REVISED STATUTES, shall advertise for the purpose of letting the contract. The Levee Act does not provide the number of days which this advertisement shall run, but shall apply to all work over \$500.00. It is customary to advertise for twenty (20) days for the purpose of letting these contracts, as the provisions of the Farm Drainage Act require twenty days advertisement to be made, and it is usual to comply with that provision in advertising for these contracts.

The commissioners have the further power to borrow money not exceeding ninety per cent. (90%) of the amount of the assessment unpaid at the time of borrowing, for the construction of any work which they shall be authorized to construct, or for the payment of any indebtedness that they may have incurred under the provisions of the Drainage Act. These bonds draw interest at the rate of not exceeding six per cent. (6%) per annum, and may run not more than one year beyond the time of the payment of the last installment on account of which the money is borrowed.

The Levee Act contains a provision that whenever it shall appear to the Court that any proceedings for the organization of the drainage district, or any assessment of damages or benefits under this Act or any law of this State is invalid as to one or more tracts of land, jointly or severally owned, situated in said district, or if any tract of land has been omitted from said assessment by reason of clerical error or other mistake, or want of proper notice or notices, as required by the act, such want of notice shall not invalidate such organization, neither shall such assessment of benefits be lost to the district, but by proper petition in court these defects can be cured and the lands assessed.

FARM DRAINAGE ACT.

The petition for the organization of a drainage district under the Farm Drainage Act shall be presented to the Town Clerk of the Town in which a majority of the land lies and shall be signed by a majority in number of the adult owners of land lying in the proposed district, who shall be the owners

in the aggregate of more than one-third of the lands lying in such district, or by the owners of a major part of the land who constitute one-third or more of the owners of the land in the proposed district, which petition shall set forth the boundaries, or a description of the several tracts of land thereof or fractions as usually designated, and shall also state that the lands lying within the boundaries of said proposed district require a combined system of drainage or protection from wash or overflow; that the petitioners desire that a drainage district may be organized embracing the lands therein mentioned, for the purpose of constructing, repairing or maintaining a drain or drains, ditch or ditches, for agricultural and sanitary purposes, by special assessments upon the property benefited thereby. The petition shall also give the names of the owners of the several tracts of land, together with their post office addresses as far as known.

Under the Farm Drainage Act there is a provision, contained in Section 76 thereof, providing for the organization of a drainage district by user. This petition can be signed by one land owner and is used where there has been a connecting system of ditch or ditches constructed by mutual agreement, which the land owners have failed to repair on demand. It is an essential of this sort of petition that it show that each tract of land which is sought to be included within the boundaries of said drainage district is connected with the ditch sought to be improved, either by setting forth a description of the connections, or by attaching to the petition a map showing the ditches connecting the various tracts of land through the drains sought to be improved.

After the petition is filed with the Town Clerk in his office, he shall, within five days after the filing of said petition give notice in writing to each of the Commissioners of Highways of said Town of the filing of said petition, and shall give notice if there be two parties only interested in the drainage, to each of the two parties concerned, or if the petition is signed by two or more and more than two parties are involved, then the notice shall be given by posting written or printed notices in

at least three (3) public places in or near the proposed drainage district, that a meeting of the drainage commissioners will be held at such place and time as the Commissioners may decide upon, not less than eight (8) days nor more than fifteen (15) days from the date of said notice.

At the time of the meeting held by the drainage commissioners in accordance with the public notice, the Clerk shall lay before them the petition and all papers in the case, and they shall thereupon proceed to ascertain whether the said petition contains the signatures of the proper number of persons. If the commissioners find in favor of the petitioners, they have power to employ a competent engineer, and shall go upon the lands included in the proposed district and personally examine the same. They shall adjourn the first meeting mentioned hereinabove to a time not less than eight (8) days nor more than fifteen (15) days and publicly announce the same. At the time to which they have adjourned they shall meet again, and they have the power at that time to organize the drainage district.

After the district is organized the commissioners shall proceed to obtain releases of right of way, and if they cannot obtain releases of right of way by agreement, the commissioners can obtain the right of way by filing the proper petition before a justice of the peace, and having a jury of six (6) men summoned to allow damages for the right of way.

After the right of way has been obtained, it is then the duty of the commissioners to classify the lands included within the boundaries of the said drainage district. For this purpose they hold a meeting classifying each forty-acre tract of land at a fractional figure of classification, on the basis of one hundred per cent. (100%); that is, the land that is the most benefited is classified at one hundred per cent. (100%), the land that is a little less benefited must be classified at a lower fractional figure, and so on until each tract of land is marked at its fractional figure; railroad rights of way and public high-

ways are classified at a definite fractional figure on the entire assessment, that is, the public highways in a town may be assessed for a one-fiftieth part of the whole work, and they are classified in this manner.

After the commissioners have adopted this classification list, they must give public notice as to the time and place, when and where they will meet to hear objections as to this classification list. A notice must be personally served on all land owners who live in the county or counties in which the drainage district lies, not less than three (3) days prior to the date of the hearing. In the event there are land owners who live inside the State of Illinois, but outside the county, a notice must be mailed them not less than three (3) days prior to the date of the said hearing. In case there are land owners who live outside of the State of Illinois, notice must be given by publishing the same for the space of three (3) weeks in a paper published in the county or counties where the district is located.

At the time of the hearing on the classification the commissioners may adjourn from day to day for the purpose of giving notice to any persons who have not received notice, and if they find that notice has been given to all land owners and after an opportunity has been given to all land owners who desire to object to urge their objections, the commissioners can then confirm the classification list as they first made it out, or they can make such changes as they think justice or right requires. Any land owner who feels aggrieved may take an appeal to the County Court of the county in which the district is located, by filing the proper appeal bond within ten (10) days after the final hearing on the classification list.

The commissioners usually wait until these ten (10) days have elapsed, to see whether any land owners have taken an appeal, and in the event no land owners take such appeal, an assessment roll can then be adopted in which each tract of land bears its proportionate part of the estimated cost of the improvements in accordance with the fractional figure as expressed on the classification list.

In the event that an appeal has been taken from the classification list, this appeal acts as a supersedeas, and the assessment roll cannot be prepared until after the appeal is disposed of.

Section 27 of the Farm Drainage Act, which we have heretofore mentioned, provides that if land owners do not appeal from the assessment roll within ten (10) days after the same is filed in the office of the Town Clerk, that they cannot thereafter raise the question as to the amount of benefits which is assessed against their land. Therefore, it is usual to wait until ten (10) days have elapsed after the assessment roll has been filed in the office of the Town Clerk before advertising to let the contract. This 'Act requires that twenty (20) days' publication be given before letting any contract over five hundred dollars (\$500.00).

Illinois today owes in great part her ability to raise the wonderful crops she does to these two acts. They may not approach perfection as nearly as do the drainage laws of some of the states, which have been enacted more recently, but they are workable, and now since Section 27 of the Farm Drainage Act has been reinstated, bonds issued by the Drainage Commissioners of Illinois constitute mighty fine securities.

SYNOPSIS OF THE DRAINAGE LAWS OF INDIANA

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The legislature of the State of Indiana has enacted three separate and distinct statutes, under each of which proceedings may be had for the construction of works of drainage or reclamation. Under two of these laws, the proceedings are instituted by the organization of an Association of parties whose lands are to be affected, and in the other, by petition directly to the local Court. Under one of the two laws providing for the organization of drainage Associations or corporations, further proceedings are had before the Board of County Commissioners, and in the other they are taken before the local Court.

In the following summary these several statutes are taken up in the order of their enactment.

ACT OF MARCH 11, 1907.

(Acts 1907, Page 508; Burns R. S. 1914,
Sec. 6141, et seq.)

This act provides that whenever the owner or owners of any separate and distinct tract or tracts of land lying outside the corporate limits of any city or town, or whenever a Township Trustee shall desire to provide for the drainage of a public highway or the grounds of a public school, or whenever a common council of any city or the Board of Trustees of any town shall find it necessary for the successful drainage of any such lands or public highways, and that such drainage can not be accomplished in the best and cheapest manner without affecting the lands of others, such land owner, Township Trustee, common council, or Board of Trustees as the case may be, may apply for such drainage by petition filed in the Circuit or Superior Court of the County in which the lands of the petitioner or petitioners are situated.

Such petition must name the owners of the various tracts of land which will be affected by such drainage and

give a description of said land, and it must also state that in the opinion of the petitioner the public health will be improved or that certain highways will be benefited or that the proposed work will be of public utility. It must also state generally the method by which it is believed such drainage can be accomplished in the cheapest and best manner and must allege that the benefits will exceed the costs and damages. The act declares that such petition shall be sufficient to give the court jurisdiction over all lands described therein, and the power to fix a lien thereon.

When the petition is filed, the petitioners note thereon the date set for the docketing thereof, and it is made the duty of the petitioners to give personal notice to the owner of each tract of land described in the petition and to the officers of the various municipal corporations whose property will be affected. Such notices must be given to non-resident land owners by publication and also by posting notices along the line of the proposed work and by mailing out notices to the address of such persons, as shown by the records in the office of the County Treasurer. All of the above notices must be given not less than twenty days before the day set for docketing the cause.

On the day set for docketing, two-thirds in number of the resident land owners named in such petition may remonstrate in writing, and the filing of such remonstrance immediately stops the proceedings. Any person whose land will be affected may file a remonstrance or exception to the petition and a hearing on same is had.

If the court finds the petition in due form of law, he then appoints a third drainage commissioner to act with the regular drainage commissioner of the County and the County surveyor. After qualifying by taking oath, these drainage commissioners then determine whether the proposed drainage is practicable, whether the work will be of public utility, and whether the benefits will likely exceed the costs and damages. If the commissioners find in the affirmative on these points, they then proceed to definitely determine the best and cheapest method of drainage, the termini and route of the proposed work, and estimate the

cost thereof. These commissioners also assess the benefits and damages as the case may be, to each separate tract of land.

In case the commissioners find that lands other than those described in the petition will be affected, they make a report of the same to the court and the court fixes a time for hearing. It is then the duty of the petitioners to give notice to the owners of such lands of the date so fixed.

When the commissioners file their final report, ten days are allowed in which any person, whose lands will be affected by the proposed drainage, may file remonstrances against the amount of his assessment or the amount of damage which he has been allowed, or that the proposed work is not practicable and of public utility, or that the system decided upon by the commissioners is not such as will properly drain the land to be affected. All such remonstrances are consolidated and a hearing thereon is given by the court without a jury. The order of court approving the report of the commissioners and confirming the assessments is final and conclusive unless an appeal therefrom be taken to the Supreme Court and an appeal bond filed within thirty days.

If the court establishes the work, then the same is assigned to a commissioner for construction. This commissioner may be any disinterested free holder of the County, and to qualify he must subscribe to an oath of office and give bond in such sum as the court may require. The commissioner for construction lets the contract for the work, collects assessments, and pays claims incurred on account of such work. However, in doing these acts, he is under the jurisdiction of the court and must report his actions to such court and have the same approved.

In case the contract price for the construction of any work exceeds the sum of five thousand dollars, bonds may be issued to procure funds for the payment of the cost of such construction. After the drainage commissioner lets the contract for construction, he then carefully ascertains and determines the total original cost of construction and all incidental costs and expenses, and apportions such costs

and expenses to the several tracts of land assessed, in proportion to the assessments, and certifies such assessments and apportionments to the Board of County Commissioners of the County or Counties in which lands are assessed for said work.

The Board of County Commissioners, at their next regular session, determine at what time and in what number of installments they will require the same to be paid. These payments must not extend over a greater period than ten years. At this time the Board of County Commissioners also fix a day not less than ninety days after the date of such order on or before which the owner of any tract or parcel of land may pay his full assessment and discharge his land from the lien of such assessment. The County Auditor then gives notice by publication that assessments may be paid on or before said date.

At the close of the period fixed by the Board of County Commissioners in which such assessments may be paid in full, the County Treasurer reports to such Board the amount of assessments paid and the Board of Commissioners, after deducting the amount of assessments paid from the total amount of all assessments, then orders the issuance of bonds of said county to the amount of the unpaid assessments. These bonds fall due from year to year as the annual collections of installments of assessments above provided shall suffice to pay the same; they bear interest at the rate of 5% per annum payable semi-annually and must show upon their face for what purpose they are issued, and are payable from such assessments and not otherwise. Although these bonds are called "bonds of the County" in this act, they have been held to be special assessment bonds and not direct obligations of the County.

It is made the duty of the County Auditor to prepare a special ditch duplicate in which he records all of the unpaid assessments for which bonds have been issued and the amount of the installment due each year together with interest on the same at 6%. This ditch duplicate is then placed in the hands of the County Treasurer whose duty it is to collect the assessments, in the same manner and at

the same time that State and County taxes are collected. In case such installments are not paid, such failure to pay results in the same penalties as in the case of delinquent taxes.

The bonds are executed by the Board of County Commissioners and they are sold after advertisement, by the County Auditor and Treasurer. The proceeds of the bonds are held in the Treasurer's office and paid out only on order of the Commissioner in charge of the construction and after approval by the court.

The lien of these drainage assessments is declared to be a lien first and paramount upon the lands so assessed from the time the same are approved and confirmed.

The act provides that the collection of assessments shall not be defeated by reason of any defect in any proceedings occurring prior to the judgment of the court confirming the assessments and injuries and that no person shall be permitted to take advantage of an error, defect, or informality unless the person complaining thereof is directly affected thereby.

ACT OF MARCH 10, 1913,

(Acts 1913, page 433; Burns R. S. 1914, Sec. 8233 b.)

This act provides that any number of persons not less than five, who may be land owners affected and interested in the construction, improvement or maintenance of any work of drainage may associate themselves together by written articles of association signed and acknowledged by each person desiring to be a member of such organization. These articles must specify the corporate name of the association, its objects, the name and residence of each incorporating member, the principal office of the association, the term of existence, and the number of directors which may be not less than three nor more than seven. Such association has no capital stock, and its articles may be subsequently amended at any time to enlarge the scope of the proposed work providing the majority of the members of the association at the time of the amendment sign and acknowledge the same. The articles of association are filed in the Recorder's office of each county into which any

part of the proposed work will extend, and duplicate copies of such articles are filed in the office of the Secretary of State.

Three or more signers of the articles of association may call a meeting at some convenient place, for the purpose of choosing directors of the association. The notice of election is given by the posting of notices in each township through which the proposed work will pass. Directors are elected each year thereafter.

The Board of Directors appoint from their number or otherwise, a clerk and treasurer. The treasurer gives bond conditioned for the safe keeping and prompt payment of all moneys that may come into his hands.

The Board of Directors are given power to employ an engineer and to enter upon lands for the purpose of making necessary surveys, estimates of cost, etc. The engineer selected by the Board of Directors makes a careful survey of the proposed work and prepares plans and specifications for the same, and estimates the cost of construction. Such plans and specifications may include any work of drainage heretofore done under any law of this state, allowing just the credits for the value thereof.

When the report of the engineer is completed, the Board of Directors of the association may then apply by petition to the Board of Commissioners of the county in which it is believed the largest amount of proposed work in value is located, for appraisers to assess the benefits and damages resulting therefrom. This petition must contain a description of each levy, dike, break water, dam, sewer, ditch, drain, diversion channel, lateral, siphon, pumping station or other work proposed to be done or maintained; the estimated value of the entire cost of the proposed work, the names, as petitioners, of either a majority of the owners of lands to be affected or the owners of two-thirds in acres of such lands. Any person whose name does not appear on such petition and who is an owner of land that will be affected by such proposed work, may file an intervening petition questioning the sufficiency of the original petition, and the same is heard by the Board of

County Commissioners. An appeal from the decision of the Commissioners may be taken within five days from the date of final action. If the Board of Commissioners finds the petition sufficient, they then appoint three appraisers to assess the benefits and damages resulting from the proposed work.

Before the appraisement is begun, it is the duty of the association to give personal notice to the land owners of the time and place where the appraisers will begin the examination of lands and the order in which the appraisers will view the lands. Non-resident owners of such lands must be given notice by publication. At the time and place named the appraisers meet and first determine whether or not the proposed work is of public utility. If the appraisers find in the affirmative on this question, then they proceed to examine all the lands believed to be affected by the construction of the proposed work. Such appraisers also examine all public roads and the property of public service corporations and assess to each tract of land, road, street and property of public service corporations, the amount of benefits which will accrue to such property and the damages if any that such property will sustain. The report of the appraisers is filed with the clerk of the association.

The Board of Directors of the association then cause a printed notice to be posted in each township through which the proposed work extends, naming a time and place in each county through which the proposed work extends, when and where the appraisers will meet for the purpose of equalizing the assessments. If any lands are included in the report which were not included in the petition to the county commissioners, then personal notice must be given to such land owners, of the time and place of the meeting of said appraisers to equalize the assessments. At the time and place named, the appraisers meet and carefully equalize the assessments and for this purpose they are given the power to hear evidence, swear and examine witnesses, re-examine plans or cause surveys and measurements to be made.

The appraisers after having completed the schedule of assessments and damages, deliver the same to the clerk of the association who files it for record, in the office of the Recorder of the county in which the lands described are situated. From the date of filing, such assessments are declared to be a lien on each tract of land described therein. This schedule of assessments must show that the whole amount of benefits assessed is equal to the estimated cost of construction of the proposed work and 10% of the whole amount in addition thereto. Otherwise the proceedings stop immediately unless the deficiency be donated and paid into the treasury, or subscribed, to be paid in the same manner as is provided for the payment of assessments of benefits.

Any person or corporation having any interest in lands embraced in any such assessments may appeal therefrom to the Circuit Court of the County wherein the petition was filed at any time within ten days from the time of the filing of assessments in the office of the Recorder.

The County Recorder records such assessments in the miscellaneous record, and then delivers the assessment roll to the auditor of the county who places the assessment against each tract of land upon the next succeeding tax duplicate, and the same is collected as other state and county taxes are collected.

If the proposed work shall exceed five miles in length it must be let by the Board of Directors by contract to the lowest responsible bidder after advertisement, but if the work does not exceed five miles in length, it may be let by contract or done under the direction of the Board as they deem best.

After all the preceding provisions have been complied with, the directors of the association may petition the Board of County Commissioners at any regular session to issue county bonds to procure money to construct such work. The county commissioners determine whether the law has been complied with and if they so find, they may authorize the issuance of bonds, running not to exceed fifteen years and at annual interest not to exceed 6% payable semi-

annually with the right to be paid in equal installments according to the whole length of time such bonds are to run. These bonds must be issued in denominations of not less than \$100.00 or more than \$500.00 each. The County Treasurer may be designated to sell such bonds or the board of commissioners may designate any bank or agency which the board deem responsible for the trust. The fund realized from the sale of the bonds is paid to the county treasurer and by him turned to the treasurer of the association on the order of the Board of Directors.

To reimburse the county for the money so advanced, the County Auditor places on the tax duplicate each year thereafter, the annual amount due from each tract of land assessed as benefited. The annual installment is fixed by the length of time that the bonds are to run; that is, if the bonds run ten years, then one-tenth of the whole amount of the assessment is due each year.

Although these bonds are called "County Bonds," the Supreme Court has held that they are not direct obligations of the county, but are to be regarded as special assessment bonds.

ACT OF MARCH 8, 1915.

(Acts 1915, page 208.)

A majority of the resident owners of lands and other property, or the resident owners of the major portion of the area in acreage of lands and other property, embraced within any contiguous body of swamp, wet, unproductive or overflowed lands or lands subject to overflow and susceptible of improvements by drainage, protection or reclamation by the same general system of works, may propose the organization of a drainage, sanitary or reclamation district, by signing articles of association which shall contain a petition asking that the lands and other property described therein be declared a drainage district under the provisions of this act. These articles of association are filed in the office of the clerk of the Circuit or Superior Court in the County in which the lands to be affected lie or if in two

or more counties, then they may be filed in the Circuit or Superior Court of the county which is most centrally located or most accessible. The articles must state the name of the association, estimated area and provisional boundary of the proposed district; also the number of years the organization is to continue, the names of the owners of land or other property in the proposed district, together with a description of the land and other property owned by each and must contain a recital that the public health will be improved, that one or more public highways will be benefited, that the work will be of public utility, that the benefits will exceed the costs and damages and that the drainage of such lands is necessary and practicable. The articles must also contain a pledge on the part of the signers thereof to pay the assessments which may be made against their respective lands or other property and to pay the expenses of organization of the association.

The clerk of the court in which the articles are filed, immediately gives notice by publication in one newspaper of general circulation in each county in which any lands of the proposed district are situated for three consecutive weeks that the matter is to be considered by the court on a certain day.

On the day named, the court considers the articles of association and if found to be in due form of law, the court orders the cause placed on the docket as an action pending and thereafter such court has original and exclusive jurisdiction, without regard to county lines and with power to fix a lien on the lands and other property in the proposed district. Objections may be filed by any owner of lands within the district and the same are heard by the court in a summary manner without unnecessary delay. In case the articles of association are found to be in proper form, the Clerk of the court transmits a copy of the same to the Secretary of State together with a certified copy of the findings and decree of the court, incorporating the district. A copy of the findings and decree, together with a plat of the district are also filed in the office of the County Recorder

of each of the counties having lands and other property in the district.

The affairs of the district are managed directly by a Board of Supervisors consisting of not less than three nor more than five resident property owners, and the Board, for the first year, may be appointed by the court, providing the articles of association petition for the appointment of certain persons named therein, or supervisors elected by the resident property owners within the district after due notice of such election is given. The election of supervisors takes place each year thereafter.

The engineering work is done by the county surveyor of the county having the largest area in the district, providing said county surveyor is a competent civil engineer, but if not a competent civil engineer, then the Board of Supervisors must elect a chief engineer. The chief engineer is required to give bond and take oath to faithfully perform his duties. It is the duty of the engineer to determine the best and cheapest method of drainage and to lay out all work and compute the necessary amount of labor and materials to complete the same. In formulating his plan of drainage, the chief engineer may, with the consent of the Board of Supervisors, consult any eminent engineer or engineers and obtain their opinion and advice concerning the best plan for drainage. The report of the chief engineer remains open to the inspection of all interested parties for at least two weeks from the date of its filing to its final adoption. The Board of Supervisors may adopt such report as a whole, or with any modifications having the approval of the chief engineer.

Additional land owners may be brought in to the proceedings at any time before the final adoption of the chief engineers report by giving notice and a hearing before the court having jurisdiction of the matter.

It is the duty of the Board of Supervisors, as soon as elected and qualified, to levy a uniform tax of not more than twenty-five cents per acre upon each acre of land within the district, to be used for the purpose of paying

expenses incurred in organization, making surveys, assessing benefits and other preliminary expenses.

After the adoption of the "Plan for Reclamation" the Secretary of the Board of Supervisors transmits a certified copy thereof to the Clerk of the court having jurisdiction of the district, together with a petition requesting the court to appoint three commissioners to appraise the lands and other property to be acquired and used by the district and to assess the benefits and damages. These commissioners must be entirely disinterested and must take oath to faithfully discharge their duties.

Upon the filing of the report of the commissioners with the Clerk of the Court having jurisdiction, notice is given to the property owners that such report will be considered on a certain day and on the day set the court hears remonstrances and exceptions that may be filed, and equalizes the assessments. If the court finds that the report is in due form and that the estimated cost of construction of the improvement is less than the benefits assessed, then the court approves and confirms the report and the assessments therein set forth and declares the work established.

The right of appeal to the Supreme Court is given, but unless an appeal is taken from the order of the court approving and confirming the assessments, then such order is final and conclusive and the collection of assessments cannot be defeated by reason of any defects in the proceedings occurring prior thereto.

The clerk of the court then transmits a certified copy of the court decree and copy of the commissioners report as confirmed by the court, to the Secretary of the Board of Supervisors of the district who transmits a certified copy of such decree and that part of the report affecting land in each county, to the recorder of each county having land in the district. It is the duty of such Recorder to record the report in the miscellaneous record and thus it acts as notice of the lien on such land.

The supervisors of the district may have the work done under their direction or may let a contract for the same as they deem best.

After the contracts for construction are let, the Board of Supervisors computes the total amount of funds necessary to meet the cost of construction and other incidental expenses and apportions such total amount to each tract of land or other property in proportion to the benefits assessed, adding thereto ten per cent. of the total amount for emergencies. The Secretary of the association then certifies to the county Recorder of each of the counties in which lands affected lie, a list of the land owners in that county together with a description of their land and the amount of the assessment which has been apportioned to such land and such certified report becomes a permanent record in such county.

The Board of Supervisors, each year thereafter, determines and levies the proportion of the total assessments necessary to meet all obligations of the association for the coming year and certifies such levy to the county treasurer not later than the first day of January of each year. It is the duty of such county treasurer to collect the amount of the assessments certified by the Board of Supervisors and such collection is made at the same time and in the same manner that state and county taxes are collected. The county treasurer must give bond to the Board of Supervisors in a sum double the probable amount of the total annual installment of assessments to be collected by him. The county treasurer is also liable to a penalty for failing to collect such installments or to promptly pay over the money collected. The Secretary of the district acts as treasurer of the association and the funds collected by the county treasurer are paid over to him. To qualify, such secretary must give bond to the approval of the Board of Supervisors.

The Board of Supervisors may, if in their judgment it seems best, issue bonds to amount not exceeding ninety per cent. (90%) of the total amount of the assessments levied in denominations of not less than \$100, bearing interest at a rate not to exceed 6% per annum payable semi-annually, to mature at annual intervals within twenty years, commencing after a period of years not later than

five years, to be determined by the Board of Supervisors. Such bonds are executed by the President of the Board and attested with the seal of the district and by the signature of the Secretary of the Board. The bonds are executed and delivered to the treasurer of the district, who sells the same in such quantities and at such dates as the Board of Supervisors may deem best. Said bonds cannot be sold for less than ninety-five (95) cents on the dollar with accrued interest. A sufficient amount of the drainage tax or assessment must be appropriated by the Board of Supervisors for the purpose of paying the principal and interest of the bonds. All bonds and coupons not paid at maturity bear interest at the rate of 6% per annum from maturity until paid. In case the proceeds of the original assessment are not sufficient to pay the principal and interest of all bonds issued, then the Board of Supervisors are authorized to make such additional levy upon benefits assessed as is necessary for that purpose. Before selling the bonds, the treasurer of the district must execute and deliver to the President of the Board of Supervisors a bond to be approved by said Board conditioned that he will account for and pay over all money received by him from the sale of such bonds and that he will return all bonds not sold.

Before issuing any bonds, the Board of Supervisors must give notice to the owners of land assessed and fix a date not sooner than 90 days, on or before which such assessments may be paid in full and the lien on the land discharged.

The act provides that "All drainage taxes provided for in this act together with all penalties for default in payment of the same, all costs in collecting the same, including attorney's fees, to be fixed by the Court and taxed as costs in actions brought to enforce payment, shall * * * constitute a lien, to which only the lien of the State for general state, county, township, school, road taxes and street assessments shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in this act."

SYNOPSIS OF DRAINAGE LAWS OF IOWA.

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Iowa has made provision, in several acts of the State Legislature, for issuing bonds against special assessments levied for constructing drains. The statutes also contain provisions for the building of levees in any case where the United States may have undertaken or may undertake such work along or near the bank of a navigable stream forming a part of the boundary of the state.

The statutes also provide for the organization of drainage districts; for the assessing of benefits; and for the issuing of bonds; the essential provisions of which statutes are found in *Chapter 2-A. Supplement Code of Iowa, 1913 and 1915*, and are as follows:

The board of supervisors of any county has authority at a regular, special or adjourned session to establish drainage districts, to locate drains, levees, ditches and watercourses and to straighten or otherwise change natural watercourses, whenever it will be of public utility or conducive to the public convenience or welfare. Draining agricultural lands is, by the law, declared to be of public utility.

Proceedings for the establishment and location of drains are initiated by the filing, with the county auditor, of a petition which must be signed by one or more land owners, whose lands will be affected by the proposed improvement or be assessed for its expense, and must set forth that a tract of land in the county, which must be intelligibly described, is subject to overflow and that the public benefit or utility, or the public health, convenience or welfare will be promoted by drainage, leveeing, etc., or by a change in the course of a natural watercourse, and also setting forth the starting point, route, terminus and branches of the proposed improvement. With it a bond,

for the payment of all costs and expenses, if the petition is not granted, must be filed.

The board of supervisors at its next session appoints an engineer, who gives bond, to examine the lands described in the petition and such others as may be benefited or which it may be necessary to condemn for the carrying out of the improvement; and to survey and locate such improvements as may be expedient for the purpose. He makes a return to the county auditor describing in detail the drains, ditches, etc., together with plats and profiles showing the ditches, the number of acres to be appropriated from each tract of land, the elevations of ponds, deep depressions, etc., and the boundaries of the proposed district, including all lands which will be benefited, with a description of each tract and the name of the owner, and giving the probable cost and any other information he may deem material. He should follow the course of natural streams as far as possible.

If in this return he recommends the establishment of the district, the Board examines it and, if it approves, adopts it. If it does not approve, it orders the engineer to submit a new one. The report may be amended at any time before the establishment of the district. After approval, the county auditor gives twenty days' notice to all land owners, including railroads, within the proposed district, and to all holders of incumbrances on land through which the proposed improvement runs, or abutting on it, and to all whom it may concern, including occupants of the lands, that the petition is pending; that the engineer's report is favorable; that the report may be amended; and stating the day set for the hearing, and that claims for damages must be filed at least five days before the hearing. Service of this notice must be made by publication in a newspaper and by posting; proof being made by the affidavit of the publisher, except, however, if any one entitled to notice has filed a signed instrument giving his address, he must be notified by registered letter at least twenty days before the hearing, unless he files a waiver with the auditor or is personally served. Proof of such

service is made by the auditor's affidavit. If any such person is not served, the board may postpone the hearing until service is obtained.

All claims for damages, except for the value of lands appropriated for right of way for the improvements, must be filed with the auditor at least five days before the hearing on the petition, or else they are waived.

At the hearing the board determines the sufficiency of the petition in form and substance (the petition being amendable at any time before final action). They may view the premises and if they find that the proposed improvements are not for the public benefit or utility or conducive to the public health, convenience or welfare, they dismiss the proceeding. If they find that they are for the public benefit, etc., and no claims for damages are filed, they may establish the district or refuse to do so, as they deem best; or they may require a new examination and report. In the last case, or if claims for damages are filed, they can only determine the necessity of a levee or drainage district, and adjourn to a day certain. The auditor then appoints three appraisers, one of whom shall be the engineer, if he is able to serve, and the others disinterested freeholders of the county, to assess the damages.

These appraisers view the land and fix the amount of damages to which each claimant is entitled, value the acreage to be taken for right of way and file reports with the county auditor at least five days before the day for hearing, which may be postponed if necessary. On the hearing, the board of supervisors decide whether the cost of construction and the damages assessed is excessive and greater than should be borne by the land benefited. If it is not excessive, they then establish the district and appoint the same or another engineer to make a permanent survey, showing the levels and elevations of each forty-acre tract. He files a report and plats, with the county auditor. The board then determines the amount of damages due to each claimant, hearing evidence if necessary. Any person aggrieved by the establishment or refusal to establish the

district, or by the amount of damages assessed may appeal within twenty days to the district court.

The damages thus assessed are paid in the first instance by the parties benefited by the improvement, or secured to be paid by a bond approved by the auditor.

The district is then divided into suitable sections, which are numbered, a time set within which the work must be completed and a competent engineer appointed, who shall give bond.

The board advertises for bids and lets a contract as provided for by the statute and there is a provision for the case of a failure by the contractor to perform his contract. If, after the establishment of the district, it appears to be expedient to change the size, location, etc., of a certain drain, it can be done by the board on the recommendation of the engineer, provided that all persons whose land is to be taken or whose assessment is increased by the change are given notice, heard, allowed to claim damages, or object to assessment and to appeal in the manner provided for in the original establishment of the district.

If, after the establishment of the drainage district, as above, it becomes necessary to do further work on the system, the board appoints three commissioners, one an engineer, the other two disinterested freeholders. They begin within twenty days personally to inspect and classify the land in the district according to the benefit to be derived, dividing it into tracts of forty acres or less, according to legal or recognized subdivisions, and assess the benefits as seems just.

In estimating benefits, only those from the improvement in question are considered, not those from others to be built.

The land receiving the greatest benefit is marked 100 and the rest such percentage of 100 as the benefit received bears to the benefit received by the other land. This classification is the basis of all assessments connected with the district, unless for good cause the board revises it. In their report the commissioners describe each tract and

name the owner according to the transfer books in the auditor's office. The auditor gives notice to the owner and to the occupant, in the same manner as provided in the establishment of the district, stating the amount of assessment on each owner, the day for hearing, and that all objections must be filed in writing with the auditor by or before noon on the day of hearing.

On the day set for hearing the board passes upon the objections; and changes, annuls or affirms the apportionment on each owner, the day for hearing, and that all cannot be shown at that time that no benefit would accrue to the land.

The board next levies a tax to cover the cost of the improvement, which bears six per cent. interest from that date, unless the land owner files in twenty days a statement that in consideration of being allowed to pay in installments, he waives all objections to irregularities or illegalities in the assessment of benefits and the apportionment of the levy. In this case the tax is payable in three installments, one at the time of the filing of this agreement, one when the work is half through, and the other when the board accepts the improvement. The tax is laid in the ratio determined as above and collected as other taxes and kept in a separate fund.

An appeal will lie to the district court from the Board's order assessing benefits or increasing the apportionment, in the same manner as in appeals from the assessment of damages.

There are provisions for a relevy of the tax if the first cannot be enforced; for the proceedings in case the drain must cross or run along railroads or highways; for the control and repair of the drain, for the manner in which land owners are to connect their land with the ditches either directly or across the land of another.

In the same manner a new district may be created including one already established, in which the value of the improvements already in existence are to be considered in determining the amount due from the owners in the district already existing.

Provision is made for the collection of the tax and for the issuance of certificates based thereon.

If the board determines that the cost of the improvement is greater than should be levied in one year, it may fix the amount to be collected each year and issue bonds bearing not more than six per cent. interest, payable semi-annually in the proportions and at the times when the taxes are to be collected, and devote the bonds to the payment of the work or sell them at not less than par, with accrued interest, and devote the proceeds to such work. If a premium is received it is credited to the drainage fund. Should the cost exceed the estimate, or the proceeds of the tax be insufficient to pay the principal and interest of the bonds, a new apportionment of the tax may be made and other bonds issued. In no case may the bonds run longer than fifteen years. The terms and times of payment of the bonds are to be fixed by the board and in no case may they exceed the amount of the benefits assessed. Any landowner may pay his assessment in full to the county treasurer, who shall give the auditor a duplicate receipt. The records must show on what lands the tax is unpaid. The bonds shall be issued for the benefit of the district numbered thereon, and shall expressly state that they are to be paid only by a tax on the district so numbered and designated. No tax shall be levied to pay the bonds on any land outside the district so numbered on the bond.

The owners of lands may mutually agree and file an instrument with the auditor showing the location and character of the drainage work desired, and the adjustment of the taxes, benefits and damages. The board of supervisors then takes appropriate steps to carry out the provisions to establish the district, and thereafter have full and complete jurisdiction as in other districts.

If the proposed levee or drainage district extends through or into two or more counties, a copy of the petition is filed with the auditor of each county.

The Board of Supervisors of each county appoints a commissioner, and the several commissioners so appointed meet and appoint an engineer. The commissioners and

the engineer then make a survey of all lands in the district and determine what improvements are necessary. The engineer makes plats and profiles showing the land, levees, ditches, etc., and also a report describing fully the effect upon the land, the course of the improvements, the cost, descriptions of land to be benefited, the names of the owners, and other information.

The subsequent proceedings are practically the same as those where the district is entirely in one county. The boards of all the counties sit together, the votes being equalized, so that each county has the same voice. In case the board of one county refuses or neglects to act within twenty days after written demand by the petitioners or in case the board are unable to agree, the petitioners may transfer the matter to the district court of any county into which the proposed district extends by giving written notice to the various county auditors within ten days after the expiration of the time specified in the prior notice or after the date of the failure to agree. The auditors then certify a copy of the record to the clerk of the court, and the case is docketed in equity and carried to a judgment of dismissal or one establishing the district.

The fact that a proposed district contains a town or city does not affect the powers and authority of the board of supervisors. In case any street, park or other public property is to be benefited, the same proceedings are taken against the city as against individual owners and the city has the same rights and obligations.

Provision is made for the drainage of highways, the record of proceedings, and an annual inspection of the improvement. Where necessary to secure a proper outlet for the district, pumping stations may be established and paid for by the same procedure as in the case of the drains themselves, except that the petition shall contain the names of one-third of the landowners if the district is yet to be organized, and one-half if it is already established. Such stations may be cared for by trustees. If necessary the board may acquire land outside the county and make

contracts where the natural outlet of the district is outside the county.

This act provides that it is to be liberally construed to promote good drainage; and the collection of assessments, where due notice has been given, is not to be defeated by irregularities prior to the order establishing the district. And if an assessment is modified on appeal, it affects the rights and liabilities of no one save the appellant. Failure to appeal is a waiver of illegalities in the proceedings, and the remedies in this act are exclusive.

Iowa Drainage bonds are exempt from state taxation.

SYNOPSIS OF THE DRAINAGE LAWS OF KANSAS.

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The drainage laws of Kansas are to be found in Chapter 34, General Statutes of Kansas for 1909, as amended by the Legislature of that State in the years 1911, 1913, 1915 and 1917 (See Kansas Session Laws for 1911, C. C. 168 to 177, inclusive; Kansas Session Laws for 1913 C. C. 184 and 185; Kansas Session Laws for 1915, C. 157 and Kansas Session Laws 1917, C. C. 172 to 177).

The general supervision of drainage, water supply, irrigation and flood control in Kansas is given to a commission known as the Kansas Water Commission by the Act of March 13, 1917, it being expressly provided, however, that this commission should not interfere with any drainage system then established in drainage districts or created under existing laws. It was created "for the purpose of investigating and controlling problems of flood prevention, drainage, domestic water supply, water power, navigation and irrigation in the State of Kansas." The commission is composed of three persons of which the Governor is ex-officio chairman and two civil engineers who are or are to be qualified to be at least associate members of the American Society of Civil Engineers and who are appointed by the Governor to hold office for four years, being appointed alternately at the odd numbered years, or until their successors are appointed and qualified. They shall be eligible for reappointment and may be removed at any time by the Governor for cause only, and shall serve without salary or compensation but are to be allowed their actual traveling expenses when on official business of the commission. Employees of the State may be appointed members of this commission without vacating their positions or without change of compensation. Authority is given to secure expert assistants, clerical and other help at such salaries as may be fixed by the commission.

This commission in conjunction with the federal Government by way of securing financial and professional aid and assistance is to work out a systematic general plan for the complete development of each watershed in the State in order to secure the most advantageous adjustment of the interest involved in matters of floods, drainage, irrigation, water power and navigation. Where any department of the federal government is now or hereafter may be engaged in the development of plans affecting any of the subjects referred to in this act, this commission may co-operate with such federal government. Water development of all kinds throughout the State must conform to the general plans adopted by the commission. It is authorized and directed to establish and maintain river gauging stations and to make such surveys and other investigations as may be necessary to a complete knowledge of the subjects assigned to it for investigation.

It was provided that the following principles should guide the commission in its decisions and plans: (a) Surface or underground waters of the State may be appropriated by the federal government by civic decisions, by corporations, and by individuals upon application to the commission and in accordance with the rules and regulations it may prescribe. Such appropriation shall not constitute absolute ownership of such waters but shall remain subject to the principle of beneficial use. (b) Where appropriations of water for different purposes conflict, they shall take precedence in the following order, viz: domestic and transportation water supply, irrigation, industrial uses, water power. In each of these decisions prior application is to govern in making allotments. (c) Appropriation in excess of the reasonable needs of the appropriators not to be allowed. (d) Waters appropriated for irrigation are to become appertinent to the lands to which they are applied, and underground waters for all purposes to become appertinent to the lands under which they flow.

The commission is to study the laws of the State relating to floods, drainage, irrigation, with a view to making

such revisions as may be necessary to accomplish the needs prescribed in this act, and they are to report the results of their investigation and make such recommendations as they may deem proper to the Legislature from time to time. Power is given to enter on private lands for the purpose of carrying out the provisions of this act.

In dealing with the different phases of drainage, the Legislators saw fit to divide the subject into five general divisions, under as many different headings. It seems best, therefore, not only for logical arrangement, but for convenience in finding the law proper, that our synopsis take up the different divisions of the subject and treat them in their proper order. The five headings with which we shall deal are;

1. Drainage within Township.
2. Drainage within County.
3. Drainage Districts.
4. Drainage on petition to court.
5. Miscellaneous.

DRAINAGE WITHIN TOWNSHIP.

Under this division of the law, the township trustee of any township in the State is given power, whenever in his opinion the same is demanded by or will be conducive to the public health, convenience or welfare, to cause to be located and constructed any ditch, drain or water course within such county. Before the trustee can take any steps toward locating or establishing any such ditch, drain or water course the law provides that there shall be filed with the township clerk a petition of one or more persons owning lands adjacent to the line of any such proposed ditch, drain or water course, setting forth the necessity of the same with a substantial description of its proposed starting point, route and terminus. This petition must be accompanied by a bond. The township clerk thereupon gives notice to the township trustee of the filing and pendency of said petition, and the trustee then determines his proceedings thereunder.

It is further provided that the petitioner or one of the petitioners shall cause notice in writing to be given to the owner or one of the owners of each tract of land sought to be affected by said proceedings of the filing and pendency of said petition. If any person owning lands sought to be affected by said proceeding be a non-resident of the county, notice must be given by publication for two consecutive weeks in some newspaper published or of general circulation in said county.

If any ditch be located through a portion of any two townships within the same county, or when benefit or damage shall attach to lands situated in the same, the trustees of such townships constitute the joint board for such proceedings.

Any person or persons claiming compensation for lands appropriated for the construction of any ditch, drain or water course, must make his, her or their application in writing therefor to the clerk of said township on or before the day appointed for the hearing of said petition, which application is laid by the clerk before the trustee; or in case the trustee established the ditch or a portion thereof on a different line from that specifically described in the petition, in so much that the same shall pass through tracts of land not described or contemplated by the petition, then and in such case, the owner of such lands may make his application in writing for compensation at any time before the order of the trustee establishing and locating such ditch is entered upon the township record.

On the day set for the hearing of the said petition, if it appear to the trustee that any person or persons who may be interested in said ditch have not been notified as required, or that any requisite preliminary steps have not been taken, he adjourns to some future time, not exceeding twenty days, and orders such notice to be given or such preliminary steps to be taken; but if the bond has been filed and notice given, the trustee proceeds to determine the petition and either locates and establishes the ditch, drain or water course, or decides against the petitioners. At this time the

trustee also examines and determines all applications made to him for compensation, and specifies the several amounts, to whom and by whom paid, and the time of payment.

Said trustee, in hearing and determining said petition calls to his assistance an engineer who locates, levels and measures the distance of such ditch, drain or water course.

The said township trustee, whenever he shall have established any such ditch, drain or water course, divides the same into suitable sections, not less in number than the number of owners of land through which the same may be located, and also prescribes the time within which the work upon such sections shall be completed, and by whom done. He then assesses and allows all the fees, costs and expenses of locating and establishing such ditch, drain or water course, and apportions the payment of the same equitably among the parties to be benefited thereby. The trustee may also prescribe the time within which assessments shall be paid, and may, if he deem it necessary and convenient to the parties, direct the clerks to prepare for the use of each person having costs to pay and labor to perform, a brief statement describing fully his, her or their apportion of such ditch, together with the length, depth, width and place of the same, amount of costs assessed against such person, when to be paid, and by what time said work to be completed. The cost and expense of keeping the ditch drained, or water course free from obstructions and in repair, is equitably apportioned among the parties benefited thereby, and said trustee may prescribe the time within which such assessments may be paid.

Any person or persons interested in the location of such ditch, drain or water course, or in the amount of compensation determined upon by said trustee, may take an appeal from the proceedings of said trustee to the probate court of such county by giving written notice thereof to the clerk of such township within five days after the decision of said trustee, and by filing with such court a bond. The probate judge, upon the filing of such bond and transcript, impanels a jury of six disinterested free holders of the county who are not residents of the township, who con-

stitute a jury for such case. Upon the return of said jury, said probate judge makes a record of all their proceedings, and makes such order as to the payment of such compensation for land used, for work to be performed, and as to the time of payment and opening and locating such ditch, drain or water course, as said jury shall report, and also taxes such costs in said proceedings as are provided by law in such cases; which costs, together with those made before said township trustee, are divided and are paid in fair proportion among the several persons interested in the location of such ditch, drain or water course, in conformity with the report of said jury.

Of course if the report of such jury is not in favor of the appellant, all costs made on such proceedings in said probate court are taxed and paid by such appellant, and collected as judgment at law in other cases,

Said ditch, drain or water course must be opened and worked, and compensation for land used in the construction of the same paid within the time specified in the order of the probate judge, and at the expiration of such term, any such work remaining undone, and the probate judge being notified of that fact, he immediately gives notice of the same of such work by sections or parts of sections of said ditch, drain or water course to the lowest bidder, by written hand bills.

As soon as an appeal is perfected from the decision of the township trustee, all further proceedings before him on said petition are stayed, but if no appeal is taken, then it is his duty upon the expiration of the time specified by him for the opening of such ditch, drain or water course, and upon being satisfied by inspection that any section or sections of the same have not been completed, to sell such work by such sections to the lowest bidder.

Immediately after the sale of any such sections, said trustee certifies to the county clerk of said county, the amount such sections sold for, adding the proportionate amount of costs and expenses of such sale, together with a correct description of each piece of land, and said county

clerk places same on the tax roll, to be collected as other state and county taxes are collected. As soon as such work is completed in conformity with such sale, and to the satisfaction of said trustee, said trustee certifies the amount due to each person, to the county clerk of the county; the said county clerk draws orders for the payment of such amount out of the county treasury.

When any ditch, drain or water course, located and established under this law, crosses or drains either in whole or in part any public or corporated road, or any railroad, or benefits any or either of said roads, so that the road bed or traveled track of any such road will be made better by the opening and construction of any such ditch, drain or water course the township trustee apportions and sets off to the county, if a county road, or to the township, if a township road, or to the company if corporated, or a railroad, a portion of the costs and expenses, and also a portion of the construction thereof, the same as to private individuals, and in proportion to the benefits conferred by said ditch, drain or water course on said roads, and compels them to pay said costs and perform said labor in like manner.

DRAINAGE WITHIN COUNTY.

The drainage law for the county is exactly the same as the law governing drainage in the township. The powers vested in the township trustee in the township, are exercised by the Board of County Commissioners in the county, and the duties performed by the township clerk in the township, are performed by the county clerk in the county. Appeals as in the township, are carried to the Probate Court of the County. The procedure and law itself can be found by referring to the heading "Drainage Within Township." It varies in no particular except those mentioned.

DRAINAGE DISTRICTS.

1. *General Law Providing For Organization of Drainage Districts Upon The Petition of Two-Fifths of The Tax*

Payers Residing Within The Boundaries of Proposed District.

The Board of County Commissioners of the several counties have power, and it is their duty, upon a proper petition being presented for that purpose, to incorporate and organize drainage districts within their respective counties.

Any drainage district may include lands within the county subject to overflow from the same natural watercourse whether the same be situated partly within and partly without, or wholly within or without any incorporated city.

The petition must describe the territory proposed to be so incorporated by sections or sub-divisions of sections, according to the government survey, or by metes and bounds, and state that the lands and property therein embraced are subject to injury and damage from the overflow of some natural water course, naming or describing it; that the improvement of the channel of such watercourse, the construction and maintenance of levies, drains or other works are necessary to prevent such an overflow; that such improvement or works will be conducive to the public health, convenience or welfare. The petition must also contain a prayer that all the territory within the boundaries defined in the petition be incorporated as a drainage district, under the corporate name therein designated.

If any lands to be included in said district, be within the limits of any city or town, it is sufficient to describe same by their appropriate numbers, as lots or blocks, or parts of lots or blocks.

Whenever a petition as described, signed by not less than two-fifths of the tax payers residing within the boundaries of the proposed district is presented to the Board of County Commissioners, it is the duty of such Board to fix a time for hearing such petition, and to cause the county clerk to give notice thereof by publication at least five days before the day fixed for the hearing.

At the time set for the hearing, provided notice as required has been given, and all preliminary steps taken, the

Board of County Commissioners hear all persons in favor or opposed to granting the prayer of said petition, and all other evidence that it desires to hear, and if upon such hearing the petition is found to be in conformity to the requirements of the act, and that the allegations therein are true, then such Board makes a finding and decision to that effect, and thereupon immediately declares the territory described in the petition to constitute a public corporation, and the inhabitants within such bounds, are incorporated a drainage district.

The Board of County Commissioners makes a record of all the above proceedings and such record entry also defines the limits of the drainage district so incorporated, and also fixes the time and place of holding the first election to choose such officers of such drainage district as are required to be elected, and designates five tax payers residing within said district, three to act as judges and two to act as clerks of such election.

Such drainage district, when incorporated, becomes a body politic and corporate, and is granted by the law exclusive control of the beds, channels, banks and of all lands, the title of which is vested in the State of Kansas, lying between the banks at high-water mark of all natural water-courses within such district; and every drainage district so incorporated has power—

First — To adopt a seal.

Second — To sue and be sued by its corporate name.

Third — To purchase, hold, sell and convey such real estate and personal property as may be deemed necessary or convenient to enable it to properly carry out the purposes of its organization.

Fourth — To take charge of and exercise exclusive control over all natural watercourses within its territorial limits, and to so widen, deepen, establish, regulate and maintain the channels thereof, and to construct and maintain such levies along the banks thereof as may be deemed necessary to prevent overflow or injury deemed likely to result therefrom, Also to make and maintain such ditches, drains,

sewers and canals through lands subject to overflow, as may be deemed necessary to carry off and prevent water from standing or remaining in pools or ponds and become stagnant upon overflowed lands, or as may be deemed necessary for sanitary purposes. Also to alter, change or abandon the channel or any part of the channel of any natural watercourse and re-locate or excavate and establish a new channel for such water course within the district, and to these ends may take private property for public use, by exercise of the right of eminent domain, and may condemn and cause obstructions in such watercourse to be removed; and may acquire by gift, purchase or condemnation such lands for the purposes described as may be deemed necessary.

Fifth — To prescribe, regulate and fix the height of the super-structures above water, the length of all spans and the location of the piers of all bridges across the watercourses in the district.

Sixth — To construct levies across the rights of way, road beds, tracks and lands of railroad companies and street railway companies, and to condemn and appropriate sufficient of such rights of way or other lands of any such railroad company or street railroad company as may be necessary for the purpose of constructing and maintaining a continuous levy of uniform height across the same.

Seventh — To fix, regulate and change the grade or elevation of all public highways, railroads and street railroads at points where any levy may cross or intersect the same.

Eighth — To require all railroad companies to elevate their tracks, at all points where the same shall be intersected by any levy, so that such tracks will not interfere with the construction or maintenance of such levy.

Ninth — To maintain in any court of competent jurisdiction suits to enforce the reasonable orders of its directors, to enjoin the placing in any watercourse of any unauthorized bridge work or structure constituting to any extent whatever an obstruction, to restrain all other wrongful encroachments upon the channel of such watercourse, and

to have all such obstructions wrongfully placed in the channel adjudged public nuisances and abated as such.

Tenth — To maintain actions in any court to recover possession of all lands situated between the banks of natural watercourses at high water mark, the title of which is vested in the State of Kansas, and to give good title to land when it constitutes an abandoned channel.

Eleventh — To annually levy and collect a general tax not exceeding five mills on the dollar, on all taxable property within the district, to create a general fund.

Twelfth — To levy assessments and special taxes as hereinafter set out.

Thirteenth — To issue negotiable bonds to pay the costs of widening, deepening and otherwise improving the channels, etc., as hereinafter set out.

Fourteenth — To contract with other drainage districts or with public corporations organized for similar purposes, or with individuals as hereinafter set out.

Fifteenth — To take from any navigable river within their corporate limits sand, gravel, rock, or other minerals without the payment to the State of any compensation therefor and sell the same and use the proceeds in the construction or maintenance of levees or river walls, or for dredging or other improvements authorized to be made or maintained by such districts.

Sixteenth — To construct and maintain streets upon, along, adjoining, or over any river wall, dock or levee and approaches thereto from, adjacent or intersecting streets, or to contract with any city or other municipal corporation in which the same may be situated, or with any private corporation or person for the making of such improvements or for the payment of a portion of the cost thereof, and to levy taxes and issue bonds in accordance with and subject to the provisions of Chapter 215 of the Session Laws of 1905 and acts amendatory thereof (hereinafter set out) to pay the cost of such improvements.

Seventeenth — To contract or otherwise cooperate with any city or other municipal corporation in which the same

may be situated, or with any corporation or person, for the construction and maintenance of sewers, drains or ditches for the drainage of any drainage district or portion thereof, or to prevent the same from being overflowed by surface water from adjoining lands, and to levy taxes and issue bonds, as set out in paragraph Sixteenth, to pay for the cost of such improvements.

Eighteenth — To make all contracts and do all other acts in relation to the affairs of the district necessary to the proper exercise of its corporate legislative or administrative powers, and to the accomplishment of the purpose of its organization.

Nineteenth — To do all other acts that may be necessary to carry out and execute the general powers hereinbefore or hereinafter granted, although not hereinbefore specially enumerated.

All powers granted to such drainage districts are exercised by a Board of Directors consisting of three persons who must be freeholders and residents of the district. These Directors hold office for three years and until their successors are elected and qualified. It is provided, however, that in districts organized in counties having a population of less than 70,000, the Directors must be freeholders of such drainage district residing in the county in which such district is located, or if such district is located in more than one county, then such Directors may reside in either county thereof.

Any tax payer who is twenty-one years of age and a resident of the district may vote at such election. No discrimination is made on account of sex. The law properly and completely covers the routine and procedure for such election, but it is sufficient to note here that the law in that respect is similar to the laws provided for in the general county elections in Kansas.

The first election of Directors under the law as amended in 1913 was held on the first Tuesday in March, 1914 (provided the district was in existence at that time) and an election was then provided for each three years thereafter on the first Tuesday in March. In case of a vacancy occurring at any time in the office of a Director, the remain-

ing Directors appointed from the qualified residents in said district a person to hold the office of Director until the next election.

The law provides that as soon as practicable after their election, the Directors shall meet and select a president, vice-president, secretary and treasurer, and shall adopt rules and by-laws to regulate the transaction of business. They must also adopt a seal, with which all contracts executed by the Board must be authenticated. The president is empowered to execute all contracts in the corporate name of the district and a Journal record is kept of all proceedings. The treasurer of the district has power to receive and receipt for special assessments, but he must deposit all funds so collected in the county treasury to the credit of the district. The county treasurer of the county in which the district is situated receives and pays out all funds belonging to the district. The purchase price of all bonds sold by the Board of Directors for cash is paid directly to such county treasurer. A majority of Directors constitute a quorum of the Board and all their meetings are open to the public. The Board may appoint or employ one or more engineers and prescribe their duties.

The Board of Directors may cause any or all natural water courses within the district to be widened and deepened, or such other improvements to be made as may be deemed necessary, but before any such work shall be contracted for, plans and specifications for such work and an estimate of the cost thereof must be made under oath by some competent engineer. The Board of Directors then has power to cause such levee or levees to be constructed and such other improvement and work to be done, and to issue bonds not exceeding in amount twenty per cent. on the taxable property of the district, such bonds to be paid by general tax to be levied upon all the taxable property within the drainage district. Such improvements must not be made until the same shall have been authorized by a vote of the tax payers.

The Board of Directors, subject to the limitation above, have power to determine what work is necessary and whether the cost thereof shall be defrayed by issuing bonds

to be paid by the levy of general taxes or by the levy of special taxes or assessments, but before any bonds shall be issued, special taxes levied or liability of any kind incurred by it, the Board of Directors must cause accurate surveys of all work deemed necessary by it to be done and accurate estimates and calculations to be made by some competent engineer.

Upon the filing of the engineer's report, the Board of Directors examines and considers the same, and if it approves the report and determines that the proposed work, or any part thereof, ought to be done and the cost defrayed by issuing bonds to be paid by general taxation and the estimated cost thereof does not exceed the amount for which such bonds may be issued, then the Board proceeds to call a special election to vote upon the question of issuing such bonds, and if such issue of bonds be authorized by the electors, then the Board causes such work to be done and issues bonds to pay the cost thereof.

If the Board determines that it is necessary or admissible to alter, change or re-locate the channel, or any part of the channel of any natural water course within the district, or to make or excavate a cut off or a new channel therefor, it may cause such work to be done and may issue bonds to pay the cost thereof.

If, upon examination of the report of the engineer, the Board determines that any levee ought to be constructed, or other work done to protect land in any part of the district from overflow, and the cost thereof ought to be paid by levying special taxes or assessments upon all of the real estate situated in the district that will be benefited by the improvement to the extent of such benefit, it appoints three freeholders, residents of the district, as assessors. The duty of these assessors is upon inspection to assess all of the lands within the district which will, in their opinion, be benefited by the proposed work, and to determine the proportion of the estimated cost of such work with which each lot, piece or parcel of land so benefited ought to be charged. The assessors then make their report to the Board, and if by such report it appears that the amount to be charged

against any tract of land will not exceed ten per cent upon its actual value as fixed by the report of the assessors, then the Directors proceed to cause such work to be done and levy special taxes or assessments, but if it appears by the assessors' report that the amount to be charged against any tract of land will exceed ten per cent on its actual value, then the Board calls a meeting of all tax payers interested and submits to such meetings the question whether such improvement shall be made or not. The question is then decided in the affirmative or negative by a majority vote of the tax payers, there present and that decision is binding upon the Board of Directors.

As soon as practicable after the report of the assessors has been filed, the secretary of the Board of Directors causes a notice to be published once in some newspaper in the county, stating in substance that a report of assessors has been filed charging real estate with special assessments and that such report is on file in his office, and fixing a time not less than five days from date of publication when all persons aggrieved by such report may be heard to contest the justness of the same. At the time fixed in such notice, the Board of Directors hears the complaints of all persons interested and has power and may review, revise, alter, correct and amend the report of the assessors. The Board then confirms the report of the assessors as amended and the amounts charged against each tract of land thereupon becomes a special assessment and constitutes a lien thereon. This decision is final and no suit or action of any kind may be maintained in any court to set aside or in any way contest or enjoin the levy of any special assessment so charged after the expiration of thirty days from date of confirmation.

Whenever the Board of Directors deems it necessary to issue bonds to be paid by general taxation, which issue requires the sanction of the tax payers, it makes an order calling an election for that purpose. A proclamation calling such election is published at least ten days before the day fixed for holding the same and at the time appointed the election is conducted, the returns made and the result ascer-

tained in the same manner as provided by law for general county elections, except that the returns are made to and canvassed by the Board of Directors. If a majority of those voting at the election authorize the issue of the bonds, the Board of Directors has power to issue same and cause the work for which they were authorized to be done.

The bonds so issued must be signed by the president and attested by the secretary of the Board of Directors and authenticated by the seal of the drainage district. The interest coupons must also be signed by the president. Such bonds may be in any denomination and made payable at any time, not exceeding forty years from date, at such place as may be designated. They must not bear a greater rate of interest than six per cent per annum, payable semi-annually and cannot be sold for less than par. The secretary of the Board keeps a record of all bonds issued.

The Board of Directors may not, under the law, make any contract for any work to be done under the provisions of this act, without first having advertised for bids, and all such contracts are let only to the lowest and best bidder; but the Board has the right to reject all bids if the same are deemed too high. Every contractor is required to give a bond to the Board, and all work done by them is under the supervision of the Board. All bids must be submitted and are opened at a public meeting of the Directors; provided, however, that in the removal of obstructions or otherwise in clearing the channel of any navigable stream for which the Board or its engineer deems it impracticable to let contracts, such work may be done in such manner as the Board may deem best.

The Board of County Commissioners of the county when a drainage district has been or may be organized, is vested with the powers to designate depositories for the funds in the hands of the County Treasurer belonging to such district at such rate of interest as may be agreed upon, not less than two per cent. per annum.

The Board of Directors has charge of all levees, embankments and other works and improvements constructed to prevent the overflow of any natural water course within

their respective districts. Whenever the Board of Directors causes any levee to be constructed, or other work done, payment for which is to be made by the levy of special assessments, it may at its discretion, instead of levying the entire special assessment therefor at one time, provide for the payment of the same by installments and issue improvement bonds therefor, payable in installments of equal amounts each year for such number of years as may be deemed advisable. Such improvements bonds may be in any such denomination as the Board may prescribe and may bear interest at a rate not exceeding five per cent. per annum, payable semi-annually, but no bonds may be issued under the provisions of this section of the law until the expiration of thirty days after the report of the assessors shall have been confirmed. Such bonds must be signed by the president and attested by the secretary of the drainage district and authenticated by its seal and the interest coupons must be signed by the president; and each of such bonds must recite that it is issued under the provisions of this act and is payable from special assessments and such recitals may be relied upon by any purchaser as conclusive. Such bonds may be delivered to any contractor as compensation for work for the payment of which the assessments were authorized, or may be sold by the Board of Directors, but none of the bonds may be delivered or sold for less than par.

When such improvement bonds are issued, the Board of Directors must levy special assessments each year sufficient to redeem the installments of such bonds next thereafter maturing and interest thereon.

Whenever it is deemed necessary to construct a levee across the right of way of any railroad company or to appropriate any private property for use by the district, the Board of Directors causes a survey and description of the land so required to be made and filed with its secretary, and thereupon makes an order declaring that the appropriation of such land is necessary. An application is then presented by the Board to the Judge of the District Court or the Court of Common Pleas of the county in which said land is situated, praying for the appointment of three

commissioners to make appraisements and assessments of damages on the land appropriated. The Judge then appoints the Commissioners, who, after first giving ten days' notice in writing and by publication to the railroad Company or other owners of the property sought to be taken, proceed to appraise the value of the lands taken and assess the other damages done. The county clerk, upon the report of the appraisers being filed in his office, prepares and deposits a copy thereof in the office of the Treasurer of such county, and if the drainage district pays to such treasurer the amounts in full of such appraisal within ninety days of the time of filing such copy in the Treasurer's office, the Treasurer certifies to such fact upon the copy of the report, and upon demand pays over the amounts of such funds to such persons as are entitled thereto. Appeal may be taken in this action by parties considering themselves aggrieved thereby.

2. GENERAL LAW PROVIDING FOR ORGANIZATION OF DRAINAGE DISTRICTS AT INSTANCE OF A MAJORITY IN INTEREST OF THE OWNERS IN THE PROPOSED DISTRICT.

A majority in interest of the owners of any contiguous body of swamp or overflowed lands in the State situated in one or more counties in the state, may form a drainage district, and for that purpose may make and sign Articles of Incorporation. Such district can in no event enclose an area of less than one hundred sixty acres. The names of all owners and a description of all lands affected must be contained in the Articles, which after being signed, are filed in the office of the clerk of the District Court of the county in which such district is located. If the district is composed of parcels of land in two or more different counties, the Articles are filed in the office of the clerk of the District Court of the county in which the greater portion of said district may be situated.

Immediately after such Articles of Association have been filed, the Clerk of the District Court issues a summons,

returnable at the next term of the District Court, directed to the several owners of real estate in the proposed district, who may be averred to be benefited thereby, but who have not signed said Articles, that the Articles as aforesaid have been filed. These said owners, after having been duly summoned, must on or before the second day of the term of court to which they have been summoned to appear, file their objections in writing, and all such objections are heard by the Court in a summary manner, and in case the objections are overruled the District Court duly declares such drainage district a public corporation. The fact that said district contains one hundred sixty acres or more of wet or overflowed lands is sufficient cause for declaring the public utility of said improvement, and is sufficient ground for declaring such organization a public corporation.

Within twenty days after said district has been declared a public corporation, the clerk of the District Court transmits to the Secretary of State a certified copy of the record relating thereto, which is filed in that office in the same manner as Articles of Incorporation are filed there under the general law. A copy of such record, together with a plat of the district, is also required to be filed with the County Clerk of the county or counties in which said district is located.

Within thirty days after the district is declared organized, the clerk of the District Court, upon fifteen days' notice, calls a meeting of the owners of said real estate situated in said district for the purpose of electing a Board of five supervisors, to be composed of owners of real estate in said district, and a majority of whom must be residents of the county or counties in which said district is located. At this election each and every acre of land represents one share and each owner is entitled to one vote for every acre owned by him in such district. The five persons receiving the highest number of votes are declared elected as supervisors and they by lot determine their terms of office, which are respectively one, two, three, four and five years, and until their successors are elected and qualified. Every year after the election of the first Board of Supervisors, at such

time and place as the Board of Supervisors designate and upon notice being given, the land owners meet and elect one supervisor therefor, as in the first election, who holds his office for five years and until his successor is elected and qualified. The elected Board fills vacancies until the next annual election, when a successor is elected for the unexpired term.

The Board of Supervisors, immediately after their election, choose one of their members chairman and another secretary,—the latter need not be a member of the Board. They adopt a seal and keep a record open to the public. The Board also publishes an annual statement of its receipts and expenditures.

The Board of Supervisors then have a topographical survey made of the district, and the engineer making this survey, must in his report to the supervisors, submit to them a plan of draining, reclaiming and protecting the lands in the district, and also the physical characteristics and location of any right of way, roadbed, bridge or bridges or other property belonging to, or under the control of any Railroad Company, and must also report the location of any and all public highways which may be crossed by any ditch or improvement planned for the district. The engineer must also submit an estimate of the cost of the proposed work; he must also go over and inspect the lands in the district, the railroad, telephone and telegraph properties in the district and all other improvements, streets, highways and bridges belonging to any county, municipal or other corporation, which may be affected by the proposed drainage and reclamation work. He then assesses as directed, and according to rules prescribed by statute, the amount of the benefits which will accrue to each tract or parcel of (land) any corporate property by virtue of the works of such district. Each tract or parcel of land, right of way and railroad bed, bridges, culverts and depot grounds within the district must bear its share of the entire cost and expenses incurred by such district. This complete report must be filed with the Board of Supervisors within thirty days after making the survey.

The Board of Supervisors appoint some competent person to award all contracts. Such contracts must be awarded to the lowest bidder, subject to the approval of the Board. This person is known as the Drain Commissioner and holds office for one year and until his successors is appointed and qualified. He has a general superintendence of all works let under contract by the district, subject to the supervision and control of the Board of Supervisors. In order to qualify for the position, he must give a bond in any sum, not less than \$2,000.00 and not more than \$10,000.00, which bond is subject to the approval of the Board of Supervisors.

If, from the report of the engineer, it appears that lands other than those incorporated by the court, will be benefited by the drainage improvements of said district, the chairman of the Board files a petition in the District Court of the county where such district was originally organized, setting out such fact, together with the names of the land owners. The same proceedings are had upon this petition and in said court as upon the original petition for the establishment of the district, and the same provisions of law are applicable. After the entering of the decree, the lands of all parties so brought into said district are subject to the same provisions of law as would have applied to them had they been included in the original petition and decree entered thereon.

The Board of Supervisors are given the power, in behalf of the district, to acquire, and if need be, condemn any real estate, easement or franchise, whether the same be within the limits of the district or outside its boundaries, that may be necessary for a right of way over or upon which to construct the dikes, drains and other works contemplated by this Act. When such Board finds it necessary to have the land condemned, it petitions the Judge of the District Court having jurisdiction, praying for the appointment of three appraisers,—disinterested freeholders of said county—to ascertain the compensation to be made to such owners or parties interested. Upon the filing of said petition, the same proceedings for a condemnation of right of way are had in all other respects as provided by law for the con-

demnation of rights of way for railroad corporations. The payment of damages and the rights of appeal are applicable to the drainage ditches and other improvements. The Board cannot proceed in its work, however, until the damages awarded are paid to the County Treasurer for use of parties interested, and if the damages are not so paid within two years from filing of report, all proceedings abate at cost of the district.

Within ten days after the filing of the report of the engineer, the chairman of the Board of Supervisors calls a meeting at some public place in the county, at which meeting the Board fixes the time and place in said county—not more than fifty, nor not less than forty days from the date of the said meeting, for the hearing of all objections to the report of the engineer and to the classification of the lands and other property therein and all objections made by land owners. At least ten days' notice by publication is given of this meeting.

The Drainage District, by its attorney, or any owner of land or other property in said district, whose land or property may be affected thereby, may file objections to the engineer's report, or to any item of the classification or the assessment of benefits therein set out within ten days after the last day of publication of the notice provided for. It is not necessary, however, for the drainage district to file any answer or other pleadings to the objections, claims or other pleadings filed by said persons in answer to said proposed assessments, but the matters are deemed denied, and the drainage district has the right to interpose any matters in defense thereto which it may have.

The Board of Supervisors meets for the hearing of the objections, and after due consideration of all the evidence before it, adopts, amends, modifies or rejects the plan for the reclamation and protection of the land and property in said district recommended by the said engineer, and determines the location, character and extent of the work and improvement necessary to be undertaken and estimates the cost thereof. From the decision of the said Board in these matters, no appeal will lie, but upon a proper showing at

any time thereafter, the Board may modify its order, should such modification be necessary, to promote the welfare of the district. At the close of the hearing, the Board enters an order, which is a matter of record, showing its decision as to the matters before it at that time.

The cost of the said hearing, in case of contest, is taxed and assessed as follows: (1) If the said matter is determined by the Board against the parties' contention objecting to said assessment, all costs upon the hearing of his said objections are adjudged against said objector; (2) In case said matter is finally determined, partly in favor of and partly against the contention of any objector, the costs are apportioned against the drainage district and said objector as the Board deems just and equitable; (3) In case the contentions of said objector are wholly sustained, the cost is paid by the drainage district.

Appeal may be taken from the judgment of the Board of Supervisors to the District Court within and for the county in which the drainage district was originally established, upon giving a bond conditioned the same as in appeals to the district court in civil actions from Justices of the Peace, and payable to the drainage corporation, and in addition thereto conditioned that the petitioner will pay all damages which may accrue to the district by reason of said appeal.

As soon as the Board of Supervisors has established the classification and benefits, as provided for in the law, it proceeds to levy and tax on the lands and other property in the district to which benefits have been assessed equal in amount to the cost of the drainage works and improvements as estimated by the engineer, or modified and confirmed by the Board plus what other additional expenses are necessarily accruing. The method of assessing and collecting the tax is thoroughly covered in the law itself. The method provided for also contemplates an additional assessment in case of a deficit in the treasury.

The Board of Supervisors may, if in its judgment it seems best, issue negotiable bonds, not to exceed the amount

of the total tax levy certified to the county clerk or clerks in denomination of not less than \$100.00, bearing interest from date at a rate not to exceed seven per cent, payable semi-annually, to mature at annual intervals, commencing after a period of five years, both principal and interest payable at the office of the County Treasurer of the county in which said district was organized or at some convenient banking house or trust company. Such bonds are not to run for more than twenty years but do not need to mature at the same time. Before issuing any bonds, however, the Board must, by resolution duly engrossed in the minutes of a meeting specially held for that purpose, order and direct the issue thereof, specifying their number, amount, rate of interest, when due and where payable. Such minutes must be engrossed on the record of the Board and be at all times open to the inspection of all parties interested, either as tax payers or bondholders. Said bonds must not be sold for less than par with accrued interest and must show on their face the purpose for which they were issued and are payable out of moneys derived from the drainage assessments or taxes. All bonds before they are sold or negotiated must be presented to the State Auditor, who examines them and the proceedings relative to their issue. All bonds so sold or negotiated are registered in his office. Before funds can be secured by the levy of a tax or the sale of bonds, the Board of Supervisors has power to borrow money and pledge the credit of the district for the payment of the same, with interest in any sum not to exceed \$5,000.00 to pay the necessary cost and expense of the organization and incorporation of the district and all other legitimate charges and expenses incurred by the Board in performing the services required of it by the law.

Before issuing any bonds, the Board must pass a formal resolution, in which must be found and declared:

- (1) The total amount of the tax as confirmed (both by the original and by the supplemental assessment, if any);
- (2) And the total amount of the deductions, if any thereon;
- (3) The estimated cost of collection;
- (4) The total amount of the next tax available for the payment of the principal

and interest on the bonds the district intends to issue. The Board then in said resolution may authorize the bonds, which the district proposes to issue, and in the same resolution the Board provides that in due time, manner and season it will cause the annual levy to be made in compliance with such resolution, and thereupon the fund, to the extent that it may be necessary to pay said bonds, shall be pledged and hypothecated to the payment of said bonds, which said pledge and hypothecation to the amount so expressed and declared is superior to any other charge against the same.

All assessments of real property and easements are a lien against the said property under this drainage Act.

The Board may sell bonds from time to time in such quantities as may be necessary. Before making any sale, the Board must at a meeting by resolution declare a resolution to sell a specified amount of the bonds and the day and hour and place of such sale. This resolution must be shown in the minutes and twenty days' notice by publication be given of the sale in a daily newspaper published in Topeka and any other paper at their discretion. This notice states that sealed proposals will be received by the Board at its office for the purchase of the bonds till the day and hour named in the resolution. The bonds are then sold to the highest bidder, provided the purchase price offered is not less than the par value of the bonds. A record is kept of all bonds sold.

In order to effect the drainage of said district, the Board is given such general and special powers as are necessary to construct the desired reclamation works.

After the Board has certified the total levy of the cost and expense to the County Clerk as directed, it proceeds to let a contract for the construction of such improvements. Twenty days' notice by publication is given, calling for sealed bids, notifying the public thereby of the time and place where such bids will be received and opened. The contract for the whole work, or any part thereof, is let to the lowest responsible bidder. The Board may, however, reject all bids, or may construct the work under its own superintendence. Contract for the purchase of material is awarded to the

lowest responsible bidder. The work is done under the direction and to the satisfaction of the drain commissioner and subject to the approval of the Board. None of the provisions of this Act (Chapter 168, Laws of Kansas, 1911) can be construed as repealing, or in any wise modifying the provisions of any other Act relating to the subject of draining, reclaiming or protecting swamp, overflowed or submerged land.

Should any particular land holder within the district desire more complete drainage for his particular land, provision is made whereby by petition to the clerk of the District Court, he may secure such drainage and a sub-district will be established on his property in order to secure such additional drainage.

The Treasurer of the County in which the drainage district is situated is ex officio treasurer of the drainage district for the purpose of collecting and disbursing said tax or assessments.

If at any time after the final construction of said improvements, the same shall become out of repair or defective for any cause, the Board of Supervisors may order an assessment for the purpose of placing the same in proper and suitable condition.

For the purpose of preserving any of the reclamation works, the Board of Supervisors has power to appoint not more than three overseers of their respective districts, who hold their offices for a term of one year, whose duty it is to keep such works in good repair.

This Act (Chapter 168, Laws of Kas. 1911) must not be construed as repealing any law now in force in this state, and applies only to drainage districts organized hereunder, provided only that Sections 2 and 11 of this Act may be made applicable to and become a part of Chapter 34, General Statutes of 1909 whenever a petition of two-fifths of the voters in said districts shall be presented to the Board of County Commissioners, praying therefor in any county in which there has been organized a drainage district.

3. GENERAL LAW PROVIDING FOR ORGANIZATION OF DRAINAGE DISTRICT UPON PETITION OF TWO-FIFTHS OF THE OWNERS OF THE ACREAGE OF THE PROPOSED DISTRICT, ENTITLED "AN ACT IN RELATION TO NATURAL WATER COURSES, PROVIDING FOR THE PROTECTION, CONTROL, REMOVING OF OBSTRUCTIONS FROM EXCAVATED CUTOFFS, SPILLWAYS AND AUXILIARY CHANNELS, AND PROVIDING FOR THE CARE AND MAINTENANCE OF THE SAME IN DISTRICTS SUBJECT TO OVERFLOW, AND TO THESE ENDS PROVIDING FOR THE ORGANIZATION OF PUBLIC CORPORATIONS TO BE KNOWN AS DRAINAGE DISTRICTS, AND PRESCRIBING THE DUTIES AND DEFINING THE POWERS OF SUCH PUBLIC CORPORATIONS."

Whenever a petition describing the upper and lower boundaries of any proposed drainage district and containing the names of at least two-fifths of the owners of the acreage of such district, whose lands in whole or in part, are included within the proposed district, is presented to the Board of County Commissioners praying that a drainage district be incorporated, such Board fixes a time for hearing such petition and the County Clerk gives five days' notice thereof by publication. The Board upon hearing, then makes its finding and reports such finding to the Secretary of State.

When a majority of the counties to be included within the proposed district has reported in favor of the organization, the Secretary of State reports such fact to the Governor of Kansas, who forthwith declares the territory described in the petition to constitute a public corporation. In such proclamation, the Governor designates the last Tuesday of the next succeeding month, on which date an election is held in each of the counties for the purpose of electing Directors. Records are kept of all these proceedings.

The Board of County Commisisoners are given the power under this Act to provide judges and clerks for such elections.

The Board of Directors consists of one person for each county in said district, if the number of counties be odd, but if the number be even, then there is an additional director at large, provided that if the district be included wholly within one county, then the number of the Directors is three. Said Directors must be freeholders who are residents of Kansas, whose lands in whole or in part are included within the said district. They hold their office for the term of three years and until their successors are elected and qualified.

Persons twenty-one years of age and freeholders resident in Kansas, whose lands in whole or in part are within the district are permitted to vote for Directors. They vote in the county within which their land is located, no discrimination being made on account of sex.

Candidates are nominated for the office of Director by petition signed by not less than five electors. Such petition must be accompanied by the written consent of the freeholder so nominated, and if there is to be elected a Director at large, he must be nominated by petition signed by not less than ten electors. Such petition must be filed at least ten days prior to the date of election with the Secretary of the existing Board of Directors, provided such a Board is in existence; otherwise, it is filed with the County Clerk. The election is held and the returns made in the same manner as is provided by law for general county elections.

The Directors elected meet on the second Tuesday of the first month following their election at the county seat of the county most centrally located in the district, and proceed to organize by electing from their own number a president, secretary and treasurer. As soon as practicable thereafter, they define the boundaries of the district and file the portion thereof relating to each county in which said district is located with the county clerk of such county. Such boundary must include all lands subject to overflow by the highest flood waters. Any freeholders, feeling aggrieved at the location of such boundary line may appeal to the Board of Directors in manner provided by this Act.

Every drainage district incorporated under the provisions of this Act has power—(1) to adopt a seal; (2) to determine and fix the district boundaries; (3) to remove all obstructions from the channel of the water courses; (4) to commence and maintain suits against any and all persons or corporations unlawfully maintaining dams or other obstructions in the channel of such water course to compel the removal of the same; (5) to condemn and take possession of all lands necessary to the construction of cutoffs, spillways and auxiliary channels provided for in this Act upon proper compensation to the owners thereof; (6) to require that all bridges across such water courses shall be of sufficient length, or that they shall be provided with sufficient trestle-work to permit the unobstructed flow of the water at flood time; (7) to construct cutoffs, spillways and auxiliary channels across railways and highways, to compel the adequate bridging of the same and to compel the raising of the grades of such railways and highways, as hereinafter provided; (8) to levy an annual tax, not to exceed two mills on the dollar, on the assessed value of all the lands and other real property included within the district to constitute a general fund to meet the incidental expenses of the district; (9) to issue bonds and provide for the payment of the same, provided that the whole amount of the bonds so issued shall not exceed fifteen per centum of the assessed value of all lands and other real property within the district; (10) to sue and be sued, and to perform any and all other acts not inconsistent with this act nor with the laws of the State of Kansas necessary to the accomplishment of the purposes stated in Section 1 of this Act.

The Board of Directors appoints an engineer who makes a study of the conditions along the water courses of the district, and prepares plans and specifications, together with estimates of the cost of making the improvements deemed necessary. In making such plans and specifications, the engineer must be guided by rules set out in this Act (Law 1911, page 284, Chapter 170, Sec. 14). Such plans, specifications and estimates must be submitted by the Board

of Directors to the School of Engineering of the State University or State Agricultural College for correction and approval.

After the approval of the plans, specifications and estimates by the School of Engineering, the Board of Directors orders an election to be held for the purpose of submitting to the electors of the district the proposition to issue improvement bonds for the purpose of carrying on the work laid out in such plans, specifications and estimates, or such portion thereof as the Board deems necessary. A proclamation calling such election is published in at least one newspaper of each county in the district, stating the time and places when and where said election is to be held. Said proclamation must be published at least ten days before the time set for the election and must contain the names of the judges and clerks appointed for each precinct designated therein. The poles are required to be kept open from 8.00 a. m. to 6.00 o'clock p. m. and the returns made and the results ascertained in the same manner as provided by law for general county elections. The Board of Directors meets and canvasses the returns of all such elections and declares the result, and if a majority of those voting at the election authorize the issue of the bonds, the Board of Directors has power to issue the same and cause the work for which they are authorized to be done.

All bonds issued must be signed by the president and attested by the secretary of the Board of Directors and must be authenticated by the seal of the drainage district and the interest coupons must be signed by such president. Such bonds may be in any denomination that may be determined upon by the Board of Directors, but must be made payable—one-tenth at the expiration of ten years from the date of said bonds, and one-tenth each year thereafter until all the bonds are paid, at such place as may be designated on the face thereof. They cannot bear a greater rate of interest than seven per cent. per annum, payable semi-annually and must not be sold for less than par. Each of said bonds must contain a recital of its issue, under the provisions of this Act, which recital is conclusive in favor

of all persons purchasing the same that all proper orders have been made, proceedings taken and conditions precedent performed and complied with to authorize the issue of the same, and that all of the lands and other real property within the drainage district issuing the same is pledged to the payment thereof.

The Secretary of the Board of Directors keeps a record of all bonds issued under this Act, showing the date, number and amount thereof and when the same becomes due. It is the duty of such Board of Directors to annually levy and certify to each of the county clerks of the several counties within the district a tax upon all of the lands and real property of this county and within the district sufficient in amount to pay the interest coupons and all bonds as they may become due, and after ten years from the date of issue and each year thereafter to provide a levy sufficient for the redemption of maturing bonds, provided that all assessments for redemption must be levied against the property aforesaid in proportion to the benefits derived.

The Board of Directors appoints a benefits and damages commission consisting of three disinterested men, one of whom must be an engineer who served during the pleasure of the Board. It is the duty of this commission to assess the cost of improvements made against the separate tracts of land and other real property in proportion to the benefits derived therefrom and to appraise the amount of damages done and the value of lands taken in making such improvements.

Benefits are divided into two classes: (1) General benefits, such as accrue to the district as a whole from the construction of such improvements. The cost of these benefits is assessed at an equal rate on the assessed value of all the lands and other real property included within the district. (2) Special benefits, those of special value to lands and other real property lying in the vicinity of such improvements, in addition to the general benefits, and the cost of such special benefits must be borne by the lands and other real property receiving the same in proportion to such benefits. The benefits and damages commission file

their report with the Board of Directors who file a certified copy of that portion pertaining to each county with the county clerk thereof and notify each person or corporation interested of the amount of damages awarded and assessments levied against his property. Any person aggrieved at any award of damages or assessment of benefits levied may appeal to the Board of Directors within twenty days from the date of filing such awards and assessments. Within thirty days from the expiration of the time for filing complaints as above, the Board of Directors fixes a time and place within the county in which the property of complainants is located for the purpose of hearing such complaints. At least five days' notice of such meeting must be given. The Board then hears and determines all matters relative to such complaints, keeps a record thereof and reports its finding to the county clerk of the county in which said meeting is heard and such finding becomes an amendment to the report of the benefits and damages commission.

After an issue of bonds has been authorized, the Directors advertise for bids and let contracts for the proposed improvements in such manner as it may deem advisable, provided that all contracts must be let to the lowest responsible bidder, who shall give a good and sufficient bond. If any drainage district organized under the provisions of this act should include a smaller district previously organized under the laws of Kansas, the provisions of this Act apply to all matters of drainage within said smaller district and the Board of Directors has charge thereof, provided that if any work of a permanent nature such as is described in Section I of this Act, has been done by said smaller district and the value is placed upon said work by the benefits and damages commission, the value thus fixed must be paid by the larger district. As to all matters not included within the provisions of this act, such smaller district remains a separate and distinct organization. This Act must not be construed as repealing or modifying any of the drainage laws of this State and applies only to corporations organized hereunder.

DRAINAGE ON PETITION TO COURT.

Whenever any owner or owners of land which would be benefited by drainage, which cannot be accomplished in the best and cheapest manner without affecting the lands of others, desires such drainage, or whenever any township board desires to provide for the drainage of a public highway, or whenever any school district board desires to provide for the drainage of the grounds of a public school, which drainage affects the lands of others, or whenever the Mayor and Council of any city finds it necessary for the successful drainage of such city to construct any drain as an inlet or outlet leading into or out of such city, or to construct drains outside said city to prevent the flooding of said city, which drain, inlet or outlet cannot be constructed without affecting the lands of others, such owner or owners, township board, school district board or Mayor and Council of any city, as the case may be, may apply for such drainage by petition to the District Court of the county in which any of the lands of the petitioner or petitioners are situated, or in case of a township board or school district board or the Mayor and Council of the city to the District Court of the County in which such township, school district or city is located.

The procedure upon the filing of such petition is only briefly outlined herein. The clerk of the District Court fixes a time for a hearing of the petition by the Court, which time fixed must not be less than forty-five days, nor more than sixty days after the filing of such petition, provided that if no term of the District Court shall convene until more than forty-five days after the filing of the petition, the time fixed would be on the first day of the next ensuing term of court.

If, upon the hearing of such petition, the Court finds the petition to be sufficient, either as originally filed or as amended, the Court appoints two citizens of the county who, together with the civil engineer constitute commissioners to manage, control and conduct such proposed district, and

such petition is referred to said commissioners for their action thereon. All objections to the petition, or to any drainage commissioner, not made before the reference of the petition to the commissioners, is deemed waived. The Court then fixes a time and place for the meeting of the commissioners and a time when they shall file their preliminary report.

The Commissioners inspect the land described in the petition and all other lands likely to be affected by the proposed work and the engineer member of the Board makes all necessary surveys for the purpose of ascertaining the facts from which to make their report. The preliminary report filed as directed by the Court must show (1) the source or head and general direction and outlet of the drain and of each arm or branch thereof and average width and depth, what part is to be opened and what part is to be tiled, if any, and whether it is to be dug by shovel, dredge or otherwise; (2) a description of all lands which will be affected by the proposed drain, with the names and residence of the owners, if known, and if not, so stating; also the name of any city, school district or other public corporation of highway or street not named in the petition which will be affected by such drainage; (3) whether such drainage is practicable and will be sufficient to properly drain the lands to be affected; (4) whether when accomplished the proposed drainage will improve the public health, benefit any public highway or grounds in the county or any street or public grounds of any city therein or be a public utility.

Any petitioner, land owner, corporation or municipality named in the petition, or who has appeared thereto, has twenty days from filing of such preliminary report within which to file any objections thereto, and any land owner not named in the petition and whose lands are not described therein, but who is named in such report and his lands therein described, and any city, school district or other municipality so brought in, shall have the same time for filing exceptions.

If the Court finds in favor of the report, and if no remonstrance signed by two-thirds of the persons to be

affected by the drainage has been filed, it refers the petition back to the Commissioners with directions to proceed with the work and make their final report. Appeal to the Supreme Court of Kansas may be perfected from this action of the District Court.

After the petition has been referred to the drainage commissioners for the second time with directions to proceed with their work and make their final report, the commissioners proceed accordingly and determine definitely the best and cheapest method of drainage, the route, location and character of the proposed work and fixing the same by metes and bounds, courses, distances and description, grades and bench-marks; divide the drain or ditch into sections, compute and set out the number of cubic yards of the excavation in each section and assess the benefits or damages, as the case may be, to each separate tract of land to be affected and to make report to the court under oath as directed.

Upon the filing of such report, ten days exclusive of the day of filing and of Sundays, is allowed to any person or corporation affected by such drainage, or whose lands are assessed for benefits or damages, to remonstrate in writing against the report which remonstrance must be sworn to and made for one of the following causes: (1) That the report is not made according to law; (2) that the benefits assessed against or damages assessed for any person or persons, corporation or corporations, are either too great or too small. If there be no remonstrance, or if the finding and judgment of the court be against all remonstrances, or if the court shall have corrected and equalized the assessments, it makes an order approving the assessments as made by the drainage commissioners or as modified and equalized by the court and declares the proposed work established. This is a final order and is conclusive unless proceedings in error are taken as pointed out to the Supreme Court. Such assessments as approved and confirmed by the court are first and paramount liens on the lands against which they are assessed, as taxes are liens.

The commissioners of drainage are superintendents of construction of the work of drainage and have authority to employ labor and to make contracts for the performance of such work and for the purchase of material therefor, but they must not enter into any contract until a sufficient amount of money shall have been paid to the clerk of the court by the persons against whom benefits are assessed to pay for all labor and material covered by such contracts.

MISCELLANEOUS.

In order to give a full synopsis of the drainage laws of Kansas, the following legislative enactments not heretofore referred to must be cited.

Chapter 172, Laws of Kansas, 1911, entitled, "An Act relating to navigable streams and to provide for the appropriation and holding of lands necessary for the improvement thereof to prevent overflow." This act declares that the appropriation of lands for making the improvements provided for in the general drainage law heretofore given is necessary for the protection of the health, life and property of the people in districts and provides the manner of such appropriation.

Chapter 173, Laws of Kansas, 1911, entitled, "An Act in relation to the organization of drainage districts and supplemental to Chapter 215 of the Laws of 1905 (supplemental to heading 1 under Drainage Districts of this synopsis). This Act provides that whenever contiguous lands consisting of tracts owned in severalty by different owners shall be subject to injury from the overflow of any natural water course, and such land may as a body be protected from such overflow and injury by the construction of levees or other works, but the owners of three-fifths of the acreage of such body of lands are non-residents and there shall not be five tax payers resident within the territory including such lands, then such territory may be incorporated as a drainage district by the Board of County Commissioners upon the presentation of a petition as prescribed by Section 3 of the Act, to which this is supplemental, which petition must be signed by not less

than three-fifths of the persons who own and pay taxes on land situated within such territory. Following this, general provision and simple form of organization is provided for. The provisions of the act to which this is supplemental apply to and govern the proceedings of the drainage districts organized under this act, which districts possess and may exercise all of the powers conferred upon drainage districts organized under said Chapter 215 of the Laws of 1905 (sub-head I under Drainage Districts of this synopsis—see Article III Chapter 34, Kansas Statutes, 1909.)

SYNOPSIS OF DRAINAGE STATUTE OF KENTUCKY.

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Reclamation work has been carried on in Kentucky for many years past, under several different statutes. For the purposes of this publication, however, it is not necessary to set out all the provisions of these laws in detail. They may be found in Carroll's Kentucky Statutes, 1915, and the Acts of Kentucky of 1918. The subjects covered and the laws applicable thereto are the following:

"Levees for Public Benefit." Carroll's Statutes 1915, Section 938a.

"Drainage of Lands," Carroll's Statutes 1915, Section 2380, amended, Kentucky Acts 1918, p. 502; Act of March 19, 1894; Carroll's Statutes 1915, Sections 2413-2417b.

Levees, Construction of by United States;" Act of 1914, p. 71; Carroll's Statutes 1915, Section 2438a, amended, Kentucky Acts 1918, pp. 687, et seq.

The above references are inserted for the convenience of those who may have occasion to examine such laws; but these statutes are not here analysed for the reason that an entirely new drainage law has recently been enacted which seems likely to become the basis for the organization of drainage, levee and reclamation districts in the future; and to it our synopsis will be confined.

Drainage Statute of 1918.

(Acts of Kentucky, 1918, pp. 192 et seq.)

Section 1. Original concurrent Jurisdiction to establish and organize drainage, levee and reclamation districts is conferred upon the county and circuit courts. Appellate jurisdiction is conferred upon the circuit courts from final judgments of the county courts concerning reclamation matters; and appeals lie to the Court of Appeals from all judgments, final in their nature, rendered by any circuit court.

Proceedings for the establishment, organization, operation and maintenance of drainage, levee, or reclamation districts may be pursued under this act, and all appeals are governed by its provisions. In procedural matters the provisions of the act are exclusive, but where the act contains no rule of procedure, the rules of the civil court practice and common law govern.

Reclamation proceedings have precedence over all other civil cases excepting election cases and special proceedings heretofore given precedence by other laws. Appeals from the county court are allowed any person, firm or corporation aggrieved by any final judgment or order. Such appeal (to the circuit court) must be taken within ten days from the date on which the judgment or order was rendered, but not thereafter. No issues are triable in the Circuit Court which were not raised by pleadings or exceptions in the county court.

In like manner any person, firm or corporation, aggrieved by any final order or judgment of the circuit court, may pray and be granted an appeal to the Court of Appeals, to be taken and prosecuted as other appeals from circuit courts; but such appeal must be taken within ten days from the day on which the order or judgment appealed from was rendered, and not thereafter; otherwise the order or judgment of the circuit court becomes final.

The party prosecuting the appeal to the Court of Appeals must, within ten days after judgment, execute an appeal bond and must also file with the clerk of the court of appeals a certified copy of the judgment or order appealed from, with a copy of the appeal bond, and, within sixty days from the entry of the order or judgment, must file with the clerk of the court of appeals a transcript of the record in the proceedings appealed from; otherwise the right of appeal terminates, the judgment becomes final; and the circuit court's judgment or order is then, by proper orders of said court, executed.

All persons, when notified, as provided in the act, to answer and show cause why any report of the board of

viewers should not be confirmed and the district established or organized, are, from and after such time deemed to be before the court for all purposes concerning the establishment and organization of the district, and the carrying out of the purposes of its organization, including proceedings to ascertain benefits, damages or assessments for the cost of establishing and organizing the district, and the cost of constructing the improvements, collection of the same, and subsequent maintenance.

Section 2. Drainage, levee and reclamation districts, when organized, have the power to construct levees, ditches, drains, sewers, or canals, or to have constructed, straightened, widened, deepened, enlarged, strengthened or improved any levee, ditch, drain, sewer, canal, creek or water course within the commonwealth, for the purpose of reclaiming, draining or improving any low, wet, swampy or overflow lands, or to prevent the overflow of lands, or to protect towns, municipalities, and cities from overflow. These powers are conditioned, however, that first, no navigable stream in the commonwealth is to be thereby impaired; and secondly, that the improvement will result in public benefit, or will promote the public health, or will be conducive to the general welfare of the community in which the proposed district is established.

Section 3. Proceedings to establish, organize and maintain any drainage, levee or reclamation district are commenced when not less than 25% of the landowners in the proposed district, or the owners of not less than 25% of the land embraced within the proposed district described in the petition, file a petition in the office of the clerk of the county court, or of the circuit court, of the county wherein said lands and other property proposed to be organized into a district are situated. If such lands are located in two or more counties, the petition is filed in the office of the county clerk or circuit clerk of a county in which some of such lands are situated; the circuit court or the county court of any county wherein is situated any part of the land described in the petition being given jurisdic-

tion, regardless of county lines; and the court in which the proceeding is commenced is given jurisdiction to the exclusion of the courts of any other county wherein any other part of the proposed district is located, with the same power it would have if all the land or other property in the proposed district were located in such county. The petition should set forth:

(a) A general description of the body of land or other property proposed to be reclaimed, drained, leveed or improved.

(b) In a general way, the conditions existing and the advantages, if any, that will result from the proposed improvement—

1. To the public benefit or utility;
2. To the public health of the community where the same is to be located and adjacent thereto;
3. To the general convenience and welfare to be promoted thereby;
4. To the lands that will be reclaimed, drained or improved, or to the towns, cities or parts thereof that will be protected from overflow or afforded outlets for sewage, or as beneficially affecting the situation of such town, city, or municipality.

(c) Such other facts as may exist which will tend to show the sanitary, agricultural, or commercial expediency or necessity for the proposed improvement.

(d) The names of persons, firms, corporations, cities, towns or municipalities owning lands or other property, including public highways, streets, sewers, railroad rights of way and road-beds which will be benefited or damaged or affected by the proposed improvement, in so far as the same are known to the petitioners.

(e) The estate each of the said owners of said lands and other property has therein.

(f) The state and county of his residence.

(g) Whether the owner is an infant or adult, or is laboring under any disability other than coverture.

(h) The Post office address of each owner of land or other property, if known to the petitioners.

It is not essential, however, to the validity of the petition that all of these facts be set out, provided the petition sufficiently describes the territory sought to be improved, and alleges that the proposed improvement will result in a public benefit or utility, or will promote the public health, or will be conducive to the general welfare of the community. Nor is it necessary that the petition describe the character of the improvement or attempt to locate any canal, ditch, drain, conduit, sewer, dam, pumping station, levee, stream, or water course proposed to be straightened, widened, deepened, enlarged, strengthened, or improved; but such facts may be set out in the petition without making the petition defective or having any controlling influence in the making of the improvement.

In describing the territory, it is sufficient that the petition contain a description by metes and bounds of the boundaries of said territory, but it may be described otherwise.

The petition may be amended or supplemented at any time before the district is fully organized.

The petition must be signed by one or more persons who own land or other property in the proposed district, and which will be affected by the construction of the proposed improvement.

Three copies of the petition must be filed with the clerk of the court at the commencement of the proceeding, and the petitioners must execute a bond in the sum of \$2,000 with surety to be approved by the clerk, payable to the commonwealth for the use and benefit of any and all persons interested in the proceedings, and conditioned for the payment of all costs and expenses which may be incurred should the prayer of the petition not be granted. An additional bond or bonds may be required when the first bond becomes insufficient, and failure to execute such additional bond within thirty days may, in the discretion of the court, result in a dismissal of the proceedings.

Any person desiring to prosecute an action under this act must so state in the petition; otherwise proceedings shall be deemed by the court to have been brought under the act of 1912, being section 2380 of the Kentucky statutes, Carroll's Edition, 1915.

Section 4. On the first day of the term of court after the petition has been filed, the court appoints a board of three viewers, (two of whom must be resident freeholders of the county or counties wherein some of the land or other property described in the petition is situated), who view the lands and other property sought to be improved. The resident viewers must have the following qualifications:

(a) Must be above the age of twenty-one years.

(b) Must not be owners of any land or other property located in the territory proposed to be organized into the district.

(c) Must not be of kin of the second degree of consanguinity to any of the petitioners nor to any person shown in the petition to be an owner of any land or other property in the proposed district.

The other member of the board of viewers must be a competent civil and drainage engineer who may not be a resident of Kentucky, provided he does not own any land or other property in the proposed district, and is not related in any degree to any of the petitioners or owners of property in the proposed district.

Section 5. Before entering upon their duties, the viewers must make oath in writing, subscribed to by each of them, faithfully and impartially to perform their duties to the best of their ability. This oath is filed with and becomes a part of the record.

The viewers then examine the lands and other property in the territory described in the petition, and also any other land and property not embraced in the petition which may be affected by the organization of the proposed district or by the proposed work, either by being benefited thereby, or in being necessary to the location of any of the work which, in their judgment, may become necessary to be done in the

proposed district. They may make or cause to be made such surveys as may be necessary to determine the boundaries and elevations in the several parts of the district, and the course of all ditches, sewers, canals, drains, water courses, creeks, streams and levees; and are required to make and file with the clerk of the court, within thirty days after qualifying (unless the time be extended by order of the judge) a written report and two copies thereof, covering the following matters:

(a) Whether the proposed improvement will or will not result in public benefit or utility, or whether the public health, convenience or welfare will be promoted thereby.

(b) Whether the establishment of the district or other proposed improvement will or will not benefit the lands, towns, cities, municipalities or other property sought to be benefited, or any of them. If the board finds that any of the lands or other property described in the petition will not be benefited, their report must specifically describe these lands and other property, giving the name of the owner or owners thereof, if known.

(c) Whether or not all of the lands or other property that will be benefited are included in the petition. If the board finds that any lands or other property not mentioned or described in the petition will be benefited or affected by the proposed improvement, they must so report, giving the names of owners and descriptions of lands or other property severally owned by them; and if any town, city or municipality will, in their opinion, be benefited or damaged, the report must so state.

(d) An accurate description of the body of land and other property which should, in their opinion, be embraced in the proposed district, by giving a boundary description thereof by metes and bounds, courses and distances, and accompanied by a map thereof. They are also required to report the names of all persons, corporations, towns, cities and municipalities who own land or other property in the district, and the post office addresses, if known, or, if not, the last post office addresses; or, if this fact cannot

be ascertained, they shall so state. They are also required to state the approximate quantity of land or other property of each such owner.

(e) Whether owners of land or other property located in, or that will be affected by the organization of, the proposed district, are adults or infants or laboring under any disability; and if the latter, whether such infant or other person under disability, except coverture, is under the age of fourteen years, stating the name of the guardian, curator or committee, the place of residence of both infant or other person under disability and his guardian, curator or committee, whether either of the parents of an infant or other person under disability is living, and who has the custody of such infant or other person under disability.

They must also make recommendations in the report as to whether or not the proposed district should be established.

The report must be signed and sworn to by at least two members of the board of viewers, and each of the three copies thereof must be received and kept by the clerk of the court. The report may at any time before final hearing thereon, be amended by the board of viewers.

Section 6. If the report of the board of viewers recommends the establishment of the proposed district, the clerk of court is required forthwith to cause notice thereof to be given to each person named in the report as the owner of land or other property, either in or outside of the proposed district, stating the time within which objections or exceptions may be filed and the time the proceeding will stand for trial. This notice must contain a description of the territory proposed to be embraced in the district, with names and post office addresses of all persons as shown in the report to be owners of land or property in the district, or affected by the construction of the proposed improvement, together with the approximate quantity of land therein owned by each person according to the report, and also a general description of the proposed improvement.

A form for this notice is set out in the statute, and should of course be followed.

Within five days after the report of the board of viewers is filed, the clerk of court is required to cause a copy of the notice to be mailed, postage prepaid, to each such owner of land or other property (including corporations, towns, cities or municipalities) at the post office address shown in the report; and also to cause said notice to be published once each week for three consecutive weeks next after the report is so filed, in some newspaper published in the county where the proceeding is pending, and in all newspapers published within the territory proposed to be incorporated in such district; and also to post a copy of such notice at each of ten public and conspicuous places within the territory proposed to be embraced in said district as described in the report. And if the district is partly located in two or more counties, he is required to post a copy of said notice at at least five different public and conspicuous places within that part of the district in each county wherein any part of the district is located, and in addition thereto post one copy thereof at the court house door at the county seat of each such county. All notices required to be posted must be so posted within ten days after the report is filed; and after the report has been filed and notice mailed to land and property owners, and published and posted, the clerk is required to certify on each copy of the viewer's report how he has performed his duties. A form of this certificate is set out in the statute.

Section 7. If the report of the viewers recommends against the establishment of the district, the clerk is not to issue any notice thereon unless the court thereafter should so order.

If the report recommends against the establishment of the district, then, at the next regular term of court, the petitioners or any of them, or any owner of land or property located in the proposed district, has the right to file objections and exceptions to the report; and the court hears and tries such objections and exceptions, in a peremptory manner, and if it appears to the court that there is reason-

able doubt as to the correctness of the recommendation, an order is entered directing the clerk to give notice in the same manner required where the report recommends the establishment of a district; except that instead of requiring the persons notified to show cause why the report should not be confirmed, they are warned to appear and show why the objections and exceptions should not be sustained and the district organized, the improvement constructed and the lands and other property located therein assessed to pay the costs and expenses thereof. After this notice has been duly given, a hearing is had as is provided where the board of viewers recommends the establishment of the district, except that if the court finds in favor of the petitioners and that the district should be established, and that the board of viewers failed to accompany their report with a map of the district, the court will order the engineer member of the board of viewers to prepare a map thereof; and the order for a judgment establishing the district is "entered, modified in accordance with the circumstances of the case."

Section 8. The certificate of the clerk of court is to be treated as a service of summons executed by a sheriff in civil actions; and when the court, from an inspection of the clerk's certificate, finds that the notice has been given by him in the manner prescribed, all persons named in the viewer's report as being owners of land or other property located in the district which will be subject to assessment, or outside the district which will be affected by the proposed improvement, are deemed before the court for all purposes as fully as if summons had been issued and executed, as provided by law in other civil proceedings; and the court by virtue of such notice, acquires complete jurisdiction over all property described in the viewers' report as being within the district and subject to assessments or affected by, or which may be necessary for, the proposed improvement; and, by virtue of such jurisdiction over said property, the court is authorized to establish such district, cause it to be organized, and all necessary assessments to be levied

and collected to pay for the improvement, and to have issued and sold bonds to secure money with which to pay the costs and expenses of the district and to do and cause same to be done in the way and manner in the act prescribed, or which may hereafter be prescribed by law.

Section 9. The court then sets the report of the viewers for a hearing and trial upon exceptions and objections thereto. It may continue the proceedings from term to term, and cause the clerk to give a proper notice, if he has failed so to do, in order that all persons owning land and property in the district, or affected thereby, may be before the court. Any owner of such property or any owner of lands or property outside the district which will be affected thereby, may file objections and exceptions showing reasons why the district should not be established; but the same must be filed within thirty days after the date of the clerk's notice; and are limited to a denial of facts alleged in the petition or stated in the viewers' report.

The report of the viewers is taken as *prima facie* correct. If the court finds that the lands or other property described in the report should not be formed into a district as prayed in the petition, the petition is to be dismissed and costs adjudged against the petitioners.

No petitioner is allowed to dismiss the petition after the viewers are appointed, without the written consent of the owners of land owning a majority of the acreage described in the petition.

If the court should find that the viewers' report does not correctly describe the body of land involved in the proposed improvement, the proceedings may be again referred to the viewers, with directions to report at a day certain fixed by the court, to which time the proceedings are continued, and no additional notice need be given unless additional lands or other property should be embraced in the amended report; in which case the hearing is again fixed by the court, and an additional notice given and published as above provided for, except such notice relates only to the additional land and property embraced in the amended

report and the owners thereof. A hearing is then had as if such additional land and property had been embraced in the original report. If the court overrules all objections, and finds that the territory or some part thereof should be organized into a district as prayed in the petition or as reported by the viewers, the court establishes the district by entering an order for judgment. A form for this order is set out in the statute.

Section 10. Upon the entry of this order, the district is considered as fully established. Costs follow the judgment of the court as in civil actions.

All owners of property embraced in the report of the viewers and appearing in the notice posted by the clerk, are bound by the judgment, whether they have filed objections or not; and cannot thereafter be heard on any question raised or which could have been raised by any party in interest up to that time; subject, however, to the right of appeal.

Section 11. Upon entering the judgment establishing the district, the court makes an order referring the district to the board of drainage commissioners of the county wherein the proceedings are pending and continues the proceedings. All persons named in the clerk's notice and before the court are required to take notice of all continuances; the clerk's notice having brought all persons named into court for all purposes and at all times.

Section 12. In all counties, towns and cities where a public ditch, sewer, drain, conduit, levee or other improvement of a similar character may have been established under pre-existing law, or may be established under this act, it is made the duty of the county judge to appoint a "board of drainage commissioners" of the county, of three members over twenty-one years of age and freeholders of the county, to have charge and control of such improvements in such county, and of all work to be done in any district organized under this act, although some of the land and property may be in other counties. (This section contains minute provisions as to appointment, qualification,

terms, etc., of the members of this board.) Under their appointment and qualification, this board becomes a body corporate under the name and style, "Board of Drainage Commissioners of ——— County, Kentucky," with power to acquire, hold, encumber, sell and convey such real estate and personal property as may be necessary to the conduct of its affairs, to sue and be sued, contract and be contracted with, and to possess such other powers and rights as usually pertain to corporations, or as may be necessary for carrying on their work under the provisions of this act; and with power to use a corporate seal and change same at pleasure. It elects a president from its own members, a secretary and treasurer from non-members; is required to meet as often as necessary at such places as its duties may require, within or without the counties in which the district or any part thereof lies; and is required to keep complete records of proceedings, which are made public records, at all times open to the inspection of the public.

Section 13. As soon as a district is referred to this board, it is required to levy a uniform tax of not more than fifty cents per acre upon the lands within the district, as shown by the viewers' report, to pay the expenses incurred in establishing the district or to be incurred in organizing it, making surveys, and assessing benefits and damages, and to pay other expenses to be incurred before the board is empowered by subsequent provisions of the act to provide funds for the cost of improvements. And in case the boundaries of the district be extended so as to include land and other property not described in the viewers' report, the same uniform tax is laid on such lands and other property when annexed to and included within the district.

Such tax is made payable as soon as levied. If not paid by December 1st of the year of the levy, it then becomes delinquent and is so returned by the Board of Drainage Commissioners to the sheriff of the county in which the land is located, to be collected by him in the same manner as general state and county taxes. It is made a lien on the property from the time of the levy, and is collectible

in the same manner and with the same penalties as other state and county taxes.

If the sum received from such levy exceeds the total of the items for which it has been levied, the surplus is placed in the general fund of the district and applied to the cost of construction.

Section 14. When the court refers any proceeding to establish or construct any improvement under this act, the board of drainage commissioners appoints a competent civil engineer, either an individual, partnership or corporation, as Chief Engineer, with power to engage assistants as such board may approve. He is given control of the engineering work; and may, with the consent of the Board of Drainage Commissioners, consult any eminent engineer and obtain his opinion and advice concerning the plans for reclamation of lands in the district. He is required to make all necessary surveys of property within the district, and adjacent thereto, that may or will be improved, reclaimed, damaged or taken in whole or in part by any system of drainage or levees that may be adopted, and also to make a report in writing to said board, with maps and profiles of surveys, and containing a plan for draining, leveeing and reclaiming property described in the order establishing the district from overflow of or damage by water. Such maps and profiles are required to indicate, as far as necessary, the physical characteristics of the district, locations of towns, municipalities, roads, streets, railroads and other rights of way, roadways, streams, water courses, ditches, sewers, conduits, levees and other property or improvements.

The report is also to contain an accurate description of each separate parcel of land, giving the name of the owner, his post office address, and the quantity of his land. The engineer is also required to make and file a property map showing boundaries of each separate tract, quantity of land thereof, name of owner, and to show thereon all streams, roads, railroads, and the location of proposed improvements for reclamation. All such maps, profiles, plans and specifications, together with the engineer's report, and

all exhibits therewith, are required to be in triplicate; one to be marked "original." The original cannot be withdrawn from the custody of the secretary, but the duplicates may be withdrawn for use by the viewers, the Board of Commissioners, the Engineer, or the contractor, when receipted for.

Section 15. The engineer's report is known as the "Plan for Reclamation" and when filed, the Board of Drainage Commissioners meets and receives and adopts it, with such modifications, if any, as may be determined upon. When so adopted, a certified copy thereof, with a copy of the order of the Board approving it, is filed with the clerk of the court in which the district was organized. The court or judge in vacation then enters an order referring the proceedings to a Board of Appraisers, to be appointed by the judge, of three resident freeholders of the county or counties in which the district is located, in no way interested in the proceeding, and not of kin within the second degree of consanguinity to any person owning land in the district. The function of this Board of Appraisers is to appraise the land and other property, and to assess benefits and damages, based on the doing of the work as described in the plan for reclamation as approved by the Drainage Commissioners. The clerk then transmits to the Board of Appraisers a certified copy of the "Plan for Reclamation." The appraisers hold a meeting as soon as possible, subscribe an oath faithfully and impartially to discharge their duties and make a true report, and organize by electing a chairman.

Section 16. Within ten days after taking the oath, the appraisers are to begin their duties. They may call for legal advice from the attorney of the district; and the chief engineer or one of his assistants is required to accompany them, and to render opinions in writing when called for.

The appraisers view the premises and determine the value of lands and other property within or without the district subject to assessment, or which is to be acquired for rights of way, holding basins, pumping stations, or other works set out in the Plan for Reclamation. They

appraise each parcel of land separately, and assess the amount of benefits, and the amount of damages, if any, that will accrue to each separate tract or other sub-division, highways, roadways, or other rights of way, and other property, from carrying out the Plan of Reclamation. In assessing benefits, the appraisers are not to consider what benefits would accrue after other ditches, improvements or other plans for reclamation may have been constructed, but may assess only such benefits as will be derived from the construction of the improvements set out in the Plan of Reclamation, or as the same may afford an outlet for drainage or overflow of such property. They are to give consideration and credit for other drains, ditches, levees or other systems of reclamation already constructed, and which afford partial or complete protection to any tract of land or other property in the district. Highways, streets, railroads and other rights of way, roadways and other property are required to be assessed according to the increased physical efficiency and decreased annual average maintenance cost by reason of the protection to be derived from the proposed improvement, capitalized upon a 6% basis. The appraisers have no power to modify the Plan of Reclamation.

The Board of Appraisers reports its findings in writing, signed by them or by at least two of them. Three copies of this report are required to be filed with the clerk of court, and one additional copy for each other county in which any part of the district is located. This report must contain a statement of findings on the following facts:

(a) A description of each parcel of land and other property, railroad, highway or other easement as described in the engineer's report.

(b) The name of the owner thereof.

(c) The name of the county in which it is located.

(e) The present value of each separate tract per acre.

(f) The number of acres in each tract.

(g) The quantity of land in each tract to be taken for right of way or other purpose.

(h) The value of the land to be so taken for right of way or other purpose.

(i) The consequential damage if any, to each tract, which will result from making the improvement.

(j) The enhancement of value of each tract, per acre, which will result from the improvement.

(k) The number of acres in each tract in each class of benefits as classified by them. .

Each tract must be reported separately.

A form for the appraiser's report is set out in this section, and should of course be followed.

If the appraisers find that any property outside of the district will be damaged, or that it is necessary to take any such property for any of the work set out in the Plan for Reclamation, they are required, in an appendix to their report, to give the name of the owner and a description thereof.

They are also required to estimate the cost of the work set out in the Plan for Reclamation, including cost of property required for rights of way, holding basins, pumping stations, and other works, and damages, and the probable expense of organization and administration as estimated by the Board of Drainage Commissioners; and to tabulate the same.

Section 17. When the appraisers' report is filed in the clerk's office, it is made the duty of the clerk, if the report shows that any land or other property is to be taken, damaged or affected, the owner of which has not been brought into court by notice, to embrace the name of such owner of land and a description of such lands in a notice then to be given by the clerk that the report of the appraisers has been so filed, and to set such report for a hearing on a day certain during the next term of court, if such next term of court does not convene within less than ten days from the day of the filing of such report. A form for this notice is given in the act.

The clerk is required, within five days after the report is filed, to post a written or printed copy of this notice at

the front door of the court house of the county where the proceeding is pending; and to cause the same to be published in a newspaper published in each county wherein any part of the district is located one day each week from and after the day the report is filed, for two consecutive weeks. One copy of each issue of each of said newspapers so published containing said notice is required to be filed as a part of the papers in the proceeding; and on the first day of the term of court at which the report stands for hearing the clerk must file in open court his certificate in writing showing that he has published said notice at the court house door and in the newspapers as required, and this certificate becomes a part of the files in the proceeding, a copy thereof being attached to each duplicate copy of the report of the Board of Supervisors. If no newspaper is published in the county wherein the proceeding is pending, or in any county wherein a part of the district is located, then a copy of the notice must be posted at the court house door in each such county and at ten public conspicuous places within the district in the county where no newspaper is published, and the same is then deemed a compliance with the provisions of the act, and the certificate of the clerk is made proof of the posting of the said notices.

All persons shown by the appraisers' report to own or control land or other property within or without the district, which, as shown by the report, will be assessed, benefited, injured or damaged, including railroads, municipal corporations, and public officials controlling streets and public highways, are given until and including the first day of the term of court at which the report is set for a hearing to file exceptions thereto; but are not thereafter allowed to do so. All exceptions to the report are required to be tried by the court on the day the proceeding is set, unless further time be required to complete the hearing. Trial of the exceptions is by the court, except where land is to be condemned for a right of way or other purposes, which must be by jury as provided by general laws for condemnation of land for railroad purposes.

Section 18. If exceptions have been filed to the report, the Board of Drainage Commissioners is empowered to effect an agreement with the exceptors, if an agreement can be reached; but no agreement shall become binding until approved by the court. And if no agreement is effected, a trial is required upon such exceptions. Trial is first had on exceptions to the assessment of damages, and, if demanded, must be by jury. This applies to damages for rights of way, whether the land taken be within or without the district. If necessary to acquire a right of way or outlet through lands not embraced in the district, this may be accomplished in the same proceeding, and the value of land to be taken for such purpose and the damage to adjacent lands caused thereby are to be determined therein. All damages to lands, inside or outside of the district, or for lands actually taken, must be paid by the Board of Drainage Commissioners out of the first funds available for that purpose. The board is required either to pay in cash or make provision for payment, and secure the payment to the owner before the land is taken, injured or destroyed, unless the party thereto waives such payment in advance. The trial of exceptions to damages assessed must be completed before any hearing or trial is had upon exceptions to the assessment of benefits or classifications of land or other property; but when the hearing on such exceptions as to damages is completed, then the court hears and determines all exceptions to the assessment of benefits and classification of lands, and such hearing is by the court, in a summary manner, "so as to carry out liberally the purposes and needs of the district and the equities of all parties interested in the improvement." The court is required to determine the correctness of the classification and assessment of benefits to each tract or other property involved when any exceptions have been filed to the appraisers' report. But the report is made *prima facie* evidence of the fact that the findings therein are true and correct.

If, after having heard and determined all exceptions, it then appears to the court that the estimated cost of the

proposed improvement is less than the benefits properly assessed against the land and other property in the district, the court is required to approve and confirm the report of the Board of Appraisers as to the classification and assessment of benefits as the same may have been amended or modified by the court. The court's order also contains the judgment relating to the condemnation of lands and other property to be taken, damaged or destroyed, whether within or without the district. But if a majority of the land-owners should at this time desire to abandon the proposed improvement, they are given the right to do so by showing that the cost thereof exceeds the benefits accruing to the lands and property in the district, and when so made to appear, the court must dismiss the proceeding.

An appeal may be prosecuted by any person, firm or corporation, from the judgment of the court, either upon the question of classification of the assessment of benefits or the assessment of damages. This appeal must be taken and prosecuted in the same manner and within the time provided for in preceding sections. No appeal can raise any question not raised in exceptions filed to the report of the Appraisers in the trial court; nor does the taking of an appeal by one person have the effect to stay the proceeding nor affect the classification of the assessment of benefits or of damages to any land or property not directly involved in such appeal. The pendency of such appeal does not in any way prevent the execution of the judgment, except as to that particular part thereof from which the appeal is prosecuted. The judgment is construed as a several judgment against or in favor of each tract or parcel of land or other property. The form of the judgment approving the report of the appraisers and the confirmation of the assessment roll of benefits and damages is required to be, as nearly as practicable, and as the conditions may permit, substantially as set out in this section.

Section 19. Within ten days after judgment is rendered, the clerk of court is required to transmit to the secretary of the board of drainage commissioners of the county

wherein said proceeding is pending each of the copies of the report of the Appraisers, corrected according to the provisions of the judgment, attaching to each a certified copy of the judgment. (He retains in his office the original.) The secretary of the board then records the copy of the judgment in the record book of the commissioners, retaining in his office two of the copies of the report and judgment and transmitting the other copies to the clerks of the county courts in the other counties in which any part of the district is located, one to each clerk.

Section 20. Contains provisions relative to payment for land or other property acquired for rights of way or other purposes.

Section 21. The board of drainage commissioners is given full power to construct any improvement which may be needed to carry out the "plan for reclamation." In their discretion, they may let a contract for such improvement, either as a whole or in sections, but before doing so they are required to advertise for bids in the manner, at the places and for the length of time which the board may, by resolution, determine will be for the best interests of the district. Such contracts are required to be let to the lowest and best bidder, who must give a bond, with ample security, conditioned that he will well and promptly carry out the contract. (This section contains other provisions relative to the performance of the work, not necessary here to be noted).

After the clerk of court has transmitted to the secretary of the board of drainage commissioners the copies of the appraisers' report of assessments of benefits, with a certified copy of the judgment, said board may, if it deems it for the best interests of the district, borrow such sums of money as may be necessary to carry on the business and prosecute the work of the district, to the extent of not exceeding 75% of the aggregate assessed benefits as shown by the report or corrected report; and to secure payment of such sums said board is empowered to pledge the faith and credit of the district. No money, however, may be

borrowed under this provision for a longer period than the actual needs of the district may require, and in no case more than five years; nor at a greater interest rate than 6% per annum; and funds so borrowed must be repaid as soon as there are sufficient funds in the hands of the treasurer coming from assessments or realized from the sale of district bonds.

Section 22. In thirty days after a contract is let for the work (or if the improvements are to be made by the employment of men and teams "on force account," then as soon as the cost of the work can be ascertained) the board of drainage commissioners is required to ascertain the cost of doing all said work and to add thereto all costs and expenses incurred in organizing the district, including fees to attorneys, engineers, employes, court costs, and the damages which may have been assessed against the district. To the total of this they are to add 10% for the purpose of defraying future expenses of the district, including salaries, fees for services of drainage commissioners, their agents and employes, including engineers and attorneys and other necessary expense which cannot be foreseen, and emergencies which may arise; and the aggregate is designated as the "minimum district assessment."

If bonds of the district are to be issued and sold, the board determines the length of time such bonds are to run and calculates the total interest which will accumulate upon the entire bond issue, the par value of which must not be in excess of 90% of the total minimum district assessment. The total of interest to the maturity of the bonds is called the "district interest assessment;" and the aggregate of the minimum district assessment and the district interest assessment is called the maximum district assessment."

The board then ascertains what percent the minimum district assessment is of the total assessed benefits to all lands, railroads, public highways and other property in the district, as shown by the appraisers report, and corrected by the court, and certified by the clerk to the secretary of

the board. In like manner the board ascertains what percent the total interest assessment is of the said total assessed benefits.

They then apportion said minimum district assessment to each separate tract or parcel of land, railroad, public highway, and other property, so that each shall bear its ratable and just part thereof. In like manner The Board apportions the district interest assessment. It then levies a drainage assessment upon the district for the amount of the said minimum district assessment, and also for the amount of the said district interest assessment; and then prepares a drainage assessment record for the district, and as many copies as there are counties in which any part of the district is situated; and also two additional copies, one for the Board of Drainage Commissioners and the other to remain permanently in the office of the clerk where the proceeding is pending. The district assessment record is required to be prepared substantially in a form as set out in this section.

Section 23. As soon as the drainage assessment record is completed, the board files with the clerk of court the several copies required, and within five days thereafter the clerk is required to cause notice of such filing in his office to be published once each week for two consecutive weeks in one newspaper published in each county in which any part of the district is located. This notice should be in substantially the form as set out in the act.

Exceptions may be filed by any owner of land, railroad, public highway or other property assessed, on or before the first day of the next term of court wherein the proceeding is pending, which convenes after the week in which the notice by the clerk has been published the second time in the said newspaper, but not thereafter. If exceptions are filed, they are required to be heard and tried by the court in a summary manner upon the records of the proceedings and other competent evidence; and if errors are found by the court, the court is required to correct the same by proper orders and to direct the clerk to show, in red ink, such

corrections on the several copies of the assessment record; and when all errors are so ordered corrected, the court then approves the assessment record; and this final order of approval and confirmation is made conclusive upon all lands, railroads, public highways and other property within the district, and the assessment record, when corrected by the clerk under court orders, is endorsed by the judge of the court as the assessment record of the district. The act then provides that "no question shall thereafter be permitted to be raised by any person at any time concerning the correctness of any assessment shown in said record, which shall be final and conclusive upon all persons whomsoever, and such assessments shall be and remain a lien upon all property and the several parcels and tracts of land and other property in said district, superior to all other liens, except state, county, school and municipal taxes." One copy of the assessment record, properly corrected, and endorsed by the judge, remains in the office of the clerk of court permanently; the remaining copies are required to be certified by the clerk of court and delivered by him to the secretary of the Board of Drainage Commissioners.

Section 24. If bonds are issued or money borrowed, the interest thereon, or which is anticipated in the levying of assessments, is not to be considered a part of the cost of the improvements in determining whether or not such cost is equivalent to or in excess of the benefits to lands or other property in the district. "The assessed enhancement of values," as the same is confirmed by the court, is made conclusive as to the benefits that will inure to property in the district.

Section 25. When the secretary of the Board of Drainage Commissioners receives the duly corrected and certified copies of the assessment record, he is required to notify the Board of Drainage Commissioners, and they are then to meet and cause the impression of the seal of the board to be made on each and every page of each of said copies. The secretary is then required to give notice that the said assess-

ment record, duly corrected, is in his hands, and that all persons whose property has been assessed may, on or before a day certain to be stated in his notice (not less than 30 nor more than 60 days) pay to the Treasurer authorized to collect the same, the minimum assessment against their property, and have the lien thereon released.

Immediately after the date fixed in said notice on or before which payments of assessments may be made, the Board of Drainage Commissioners is required to meet and adopt a resolution, to be entered upon the records of the board, stating the total amount of bonds to be issued by the district, determining therein the number of series, the time of payment of each series, and the denominations thereof.

Section 26. Immediately after the Board has adopted the resolution relative to the issuance of bonds, the secretary of the Board must forthwith prepare the district assessment register, in a well-bound book, and as many copies as there are counties in which any part of the district is located. This register must contain the name of the owner of each tract or parcel of land, railroad, highway, and other property found in the report of the Appraisers in the assessment of benefits, a description of the property assessed as therein described, as modified and confirmed by the court, the minimum district assessment, the interest district assessment, and the annual installment to be paid each year during the period covered by the bond issue, except in cases where the minimum district assessment has been previously paid. A form for the district assessment register is given in this section; and also certain other directions with references thereto, all of which should be carefully followed.

Section 27. Whenever the board deems it to the interest of property owners not to require the minimum district assessment to be collected for a number of years, it may, by resolution, fix the time when the first annual assessment shall become payable, not more than five years from the time the assessments are confirmed by the court; but in such case sufficient annual assessments are required to be levied and collected each year until the year the first installment

of the minimum and interest assessments are due to pay the interest on the bonds plus cost of levying and collecting the same. These annual interest installments are levied on all property in the exact ratio of the assessments.

Section 28. The board is required annually to certify to the sheriff or tax collector of each county of the district the annual installment of the assessments levied which are to become due during the succeeding year, and a form of certificate is set out which should, of course, be carefully followed.

Section 29. From the date of filing the assessment register in the county clerk's office, the assessments constitute a lien until paid, second only to the lien for state, county, school and road taxes.

Section 30. This section contains adequate provisions for the collection of assessments, and for the sale of property for delinquent assessments, in the same manner as sales for state and county taxes, and subject to redemption under the same legal provisions.

The purchaser at such a sale takes the property subject to future assessments for making the improvement; and acquires the same estate and interest in the property so purchased that purchasers of property acquire at sales for state and county taxes, subject alone to the provisions of this act.

Section 31. The Treasurer of the Board of Drainage Commissioners is the treasurer of all districts organized in the county, and receives and receipts for all drainage assessments collected by the sheriff or county clerk. He gives bond in such amount as is fixed by the board, conditioned as provided in the statute. This bond is in addition to a bond provided for the proceeds of sales of bonds of the district required by a subsequent section. The treasurer is required to keep funds received by him deposited in some bank or trust company to be designated by the board, crediting to the district all interest thereon. The Board is required to have a competent accountant audit his books each year, file a copy with the clerk of court, and publish a state-

ment within thirty days showing amounts received, amounts paid out, and amount in the treasury at the beginning and at the end of the year. The treasurer may pay out funds only on warrants issued by the board, at regular meetings, of which a record is kept; and the section sets out the form of warrant.

Section 32. This section confers very broad powers upon the Board of drainage commissioners "to effect drainage protection and reclamation of the lands or other property in any district organized under this act subject to assessment." These powers need not here be specifically mentioned, but embrace any physical changes whatsoever in the lands or in the water courses of the district; the construction of any works "deemed necessary" to prevent overflow; the construction or enlargement of bridges, railroads, and acquisition of land by condemnation, donation or purchase, for any of the purposes provided for in the section; and the purchase of materials.

Section 33. Provides for the retaining of counsel to represent the district and to advise the board.

Section 34. Requires the board to keep records and given by employes, accounts and expenditures allowed and minutes of all meetings, proceedings, certificates, bonds ordered paid, and any and all corporate acts with reference to the district. These records are required to be open at all times to the inspection of any one interested, taxpayer or bond holder.

Sections 35, 36 and 37. These sections contain provisions relative to the construction or enlargement of bridges or culverts by railroads, county or other corporation, made necessary by the work of the drainage district.

Section 38. Provides that when any warrant issued under the act is not paid because of lack of funds, the fact is endorsed on such warrant, and it draws interest thereafter at the rate of six percent per annum.

Section 39. No change of venue is allowed in any of the proceedings had under the act, but provision is made

for the holding of court by a special judge in cases where the regular judge is disqualified.

Section 40. This section contains provisions relative to fees of officers performing services, the duties of attorneys, the allowance of their fees, the providing by resolution of the board for compensation for work done and expenses incurred by any officer, engineer, attorney, or employe, and the enactment of specific fees and compensation for certain classes of service.

Section 41. The word "owner" as used in the act is defined to be the owner of the freehold estate, and does not include reversioners, remaindermen, trustees, or mortgagees, which latter are not to be counted, nor is it necessary for the clerk to give notice to any person except the owner; but, in any proceeding under the act, all interests are deemed to be represented by the present owner of the freehold estate. This provision does not apply to proceedings for condemnation, which are governed by the general law. The word "owner" also includes railroads, counties, and other corporations, including municipal corporations, whose highways are affected by the work to be done in the district. The word "person" is made to include individuals, counties, co-partnerships, corporations, railroads, municipal corporations, and quasi municipal corporations, and the section provides that all persons who acquire rights in any land or other property after the establishment of the district, or the assessments of damages, or benefits, or after the giving of any notice, or during the pendency of any proceeding provided for in the act, shall be bound thereby as the original owner.

Section 42. If, in the judgment of the board of Drainage Commissioners, it seems best, that board may issue bonds on behalf of any drainage district under its control, not exceeding in amount ninety percent of the total minimum district assessment, levied upon the land and other property of the district under the act, approved by the court, in denominations of not less than \$100, at an interest rate not exceeding 6% per annum (payable annually) with maturities

at "annual intervals within thirty years," commencing after a period of years not later than five years, to be determined by the board; both principal and interest to be payable at some convenient banking house or trust company to be named in the bonds; such bonds to be signed by the President of the Board of Drainage Commissioners, and the secretary of the Board, with the seal thereof, and countersigned by the county clerk of the county in which the district is organized. When executed, the bonds are delivered to the treasurer of the district, who is authorized to sell them in such quantities, and at such dates, as the Board may deem necessary to meet payments for the improvements. The secretary of the board certifies to the clerk of the county court in which the district was organized a copy of the resolution authorizing the issuance of the bonds, with a list of the bonds and their respective maturities and amounts. The clerk then records this resolution in the *Lis Pendens* Record in his office, and countersigns each of the bonds before they are issued and delivered to the treasurer.

These bonds cannot be sold for less "than their par or face value at the date of issual." They must show on their face the purpose for which they are issued, and are payable out of money derived from the assessments; and sufficient amounts of the drainage assessment must be appropriated by the board for the purpose of paying principal and interest, and, when collected, must be preserved in a separate fund for that purpose and no other.

All bonds and coupons not paid at maturity, bear interest at 6% per annum until paid, or until sufficient funds have been deposited at the place of payment. In making the annual levy of assessments, it is made the duty of the board to take into account the maturing bonds and interest, and to make ample provision in advance therefor. If the proceeds of the original assessments are not sufficient to pay principal and interest of all bonds issued, the board is required to make such additional levies upon benefits as may be necessary for this purpose; but, under

no circumstances, can any levies of assessments be made in excess of the benefits to the property as shown by the appraisers' report, corrected and confirmed by the court.

At the time when the treasurer receives the bonds, he is required to execute and deliver to the president of the board of drainage commissioners a bond with sufficient surety, to be approved by the board, conditioned among other things, that he will account for and pay over as required by law, and ordered by the board, all moneys received by him on the sale of the bonds. The treasurer is also required promptly to report all sales of bonds, and the board is required to issue warrants for the payment of maturing bonds so sold and interest payments thereon. Each of such warrants must specify what bonds and accruing interest it is to pay, and the treasurer is required to place sufficient funds at the place of payment to pay maturing bonds and coupons when due, as well as compensation to the bank or trust company, not to exceed \$2.50 for each \$1,000 par value of bonds or coupons paid.

Funds derived from the sale of bonds must be used for the purpose of paying the cost of the reclamation works and improvements, and such costs, expenses, fees and salaries as may be authorized by law, and for no other purpose.

Section 43. To maintain the improvements and defray current expenses of the district, the Board of Drainage Commissioners is authorized, upon completion of the improvements, and on the first Monday in December in each year, to levy an assessment to be known as a "maintenance assesment." This is apportioned upon the basis of benefits assessed on account of original construction, is levied to ten percent thereof in any one year, and is certified to the sheriff or collector in the same book, and at the same time, as the annual installment of assessment is certified, but in a separate column. The maintenance assessment is payable at the same time that other assessments of the district are payable, bears the same penalties, and is enforced in the same manner.

Section 44. Where the work set out in the "plan for reclamation" is found insufficient to reclaim in whole or in part any of the property of the district, the Board of Drainage Commissioners has the right to formulate new plans, or amended plans containing new ditches, levees, etc., or enlargement of existing ditches, levees, etc.; and additional assessments may be made, in conformity with the provisions of the act, in proportion to the increased benefits accruing because of the additional works. And if, at any time, it be found that the amount of total assessments levied is insufficient to pay the cost of the works set out in the plan for reclamation or the additional work done under the provisions of this section, the board may make an additional levy or levies to provide funds to complete the work. But the total of all levies cannot exceed the total amount of benefits assessed as approved and confirmed by the court.

Section 45. This section contains provisions permitting property owners to pay their assessments in full at any time on or before a date to be fixed by the board.

Section 46. The board, in behalf of any district, or the owners of property adjacent to such district, who shall desire to have their property annexed thereto, have the right to file a petition in the office of the clerk of the court organizing the district, praying the court to amend its former judgment by correcting the names of land owners, striking out any names, adding to, striking out, or correcting any descriptions of land within or alleged to be within the boundary of the district, or in any other manner to amend its judgment. The petition may also ask permission of the court to amend, or to correct any errors, omissions, or mistakes in the plan for reclamation, or in the petition for organization of the district; and may ask that the boundary lines of the district be extended to include lands not described by or included in the judgment of the court organizing the district. If the petition asks for a change in the plan of reclamation or the boundary lines of the district, it must also ask the court to appoint three appraisers, as provided for in the original proceeding, to appraise land

that may be taken for rights of way, holding basins, etc. and to assess benefits and damages.

As soon as the petition has been filed, the clerk of court must give notice of such fact in the manner and for the time provided in preceding sections. (And he should follow the form of notice set out in this section.)

Section 47. Any owner of property within or out of the district that will be affected by the changes enumerated in the petition has the right to file objections on or before the first day of the term of court at which the petition is to be heard. The court hears the petition, and any objections that may have been filed, in a summary manner, and enters its judgment according to its findings. Within fifteen days thereafter the clerk is required to transmit a certified copy of the judgment and of the petition to the secretary of the board of drainage commissioners, who must transmit a copy thereof to the clerk of each county court of each county in which any lands in the district are located. If the judgment provides that the plan for reclamation be amended, changed or corrected, or the boundary lines of the district extended, the court directs the board of appraisers to appraise the property to be taken, to assess benefits and damages, and to estimate the cost of the improvement. The appraisers make a report in writing, and file the same with the clerk, and thereafter proceedings are had in the same manner as provided for in the original formation of the district. If the petition is dismissed, the parties filing it are required to pay the costs. If the petition be sustained, the objectors must pay the costs.

Section 48. This section contains provisions relative to use by landowners of ditches, drains, canals, and water courses as outlets for lateral drains.

Section 49. This section contains provisions for the payment of expenses incurred and time expended by the Board of Drainage Commissioners, the engineer, superintendent, and other employees.

Section 50. Under certain circumstances, the district may make use of any natural or artificial stream, drain,

cut or depression, or any natural or constructed levee or embankment, as a part of the reclamation system.

Section 51. This section contains provisions for keeping ditches, drains, etc. in good condition; the appointment of a superintendent of drainage; and the employment of labor and assistants.

Section 52. By this section it is provided that any person who acquires title to property affected by any proceeding under the act, after the filing of the petition for the establishment of the district and the giving of the clerk's notice, is deemed privy to the person owning or in possession under claim of ownership at the time of the filing of the petition, and is bound by all proceedings thereafter as such owner would have been bound. The property assessed is made liable for the assessment, and each installment thereof must be paid by the owner in possession at the time it becomes due. Any land assessed for benefits in which one person owns a life estate, with a remainder to another, is assessed as any other land, and the names of both life tenants and remaindermen, if known, are reported; but the remaindermen or reversioners need not be brought into court otherwise than as provided by the notice. Assessments are levied against each tract of land, and may be paid by either life tenant or remaindermen; and when so paid, the owner for life or in remainder, as the case may be, becomes liable to the one paying the assessment for such proportion of the amount paid as his interest in the property bears to the total property assessed, according to the life tables at that time in use in the commonwealth, and for his benefit the lien provided for in the act for the original assessment is made to continue, and may be enforced by action in the courts. In like manner the owner of an undivided interest may pay the whole assessment, and be entitled to like contribution and substitution.

Section 53. This section makes provision for repairs to the improvements made necessary by the act or negligence of any landowner.

Section 54. The provisions of this act do not affect any proceeding previously pending for reclamation improvements, and make all proceedings previously initiated, and all steps taken to organize a district for any such purpose, and all districts heretofore organized under any law of the commonwealth, valid. But where proceedings for reclamation purposes are, at the time of the passage of the act, pending, such proceedings may be prosecuted under this act, and the court, on motion of the petitioners or the Board of Drainage Commissioners, will order the Board of Viewers (if such board has been appointed) to make its report in conformity with the requirements of this act, and subsequent proceedings are likewise under its provisions. Districts partly organized under other laws may elect to complete the organization under this act, and if the benefits to lands and other property have been classified and special assessments confirmed by the court, the Board of Drainage Commissioners is required to employ as the basis for making the assessment, the rules contained in Sections 10, 11, and 12 of the act of March 19, 1912, but unless the petitioners or Board of Drainage Commissioners desire to proceed under the provisions of this act, the proceedings are continued under existing laws.

Section 55. This section fixes a schedule of fees allowed to attorneys representing the petitioners, and to engineers, and provides that any fees allowed in excess of this schedule and entering into the total costs as the basis for assessments, shall be ground for exceptions, which shall be sustained by the court except when the litigation may be extraordinary and permission is first obtained from the court or judge in vacation to employ additional counsel, in which event the minimum fees to be allowed shall be determined by the court or judge before the board can make any contract with such additional counsel.

Section 56. This section requires the provisions of the act to be liberally construed so as to carry into effect the true intent and meaning thereof, and to promote drainage and reclamation and prevention of damage by overflow.

If any part of the act, or any provision, should be declared unconstitutional, this does not affect the remaining portions of the act. The collection of the assessment is not to be defeated, where the parties are properly before the court, on account of any irregularity in the proceedings which does not affect substantial rights. Parties and privies properly before the court by virtue of the notice, or as provided for under pre-existing law, are deemed to be before the court for all purposes, and are bound by all orders, judgments and proceedings in the case not excepted to or appealed from. If, for any cause, on appeal or otherwise any property is released or any assessment raised or lowered, this does not affect the rights or liabilities of other property or persons; and failure to appeal within the time prescribed is declared a waiver of any right to attack the proceedings.

Section 57. This section preserves to the fiscal court or other governing authority of any county, town, city or municipality, its jurisdiction and control over any levee, ditch, sewer, or drain, established or constructed by authority thereof; but such works may be utilized as outlets for any ditch or drain which may be established under the act; and the governing authority of such county, or other governing authority, may delegate to the board of drainage commissioners jurisdiction and control, or a joint use and control over such works, upon such terms as may be agreed upon, reduced to writing and approved by the fiscal court or other governing body, and by the Board of Drainage Commissioners, and recorded upon the minutes of both bodies. And the fiscal court or other such governing authority is given the right, when in its judgment the public interest and welfare justify it, to make appropriations for the purpose of aiding any drainage, levee or reclamation district in constructing or keeping in repair any improvement provided for in the act.

Section 58. Whenever any public ditch, sewer, or drain constructed under this act or any pre-existing act, empties into a natural drain, creek or water course, the latter, from the mouth of the public ditch or drain to the mouth of such

natural drain, creek or water course, is declared to be a public ditch, subject, as other public ditches, to the supervision and control of the Board of Drainage Commissioners of such district.

Section 59. Makes provision for the removal of obstructions existing in any natural drain, creek or stream constituting an outlet for such public ditch.

Section 60. In any proceedings pending which were commenced under the provisions of Chapter 132 of the acts of 1912, the assessments of benefits to lands, railroads, public roads, and other property may be appraised as provided in Section 16 of this act (that is of 1918) or under sections 10, 11 and 12 of said chapter 132; but in proceedings hereafter commenced the classification shall not form the basis upon which assessments are made; and the only effect of classification provided for in the form set out in section 16 of this act is to aid the court to determine the correctness of the appraisement of benefits shown in the report.

Section 61. This section provides for the pro-rata distribution of any funds which may be in the hands of the treasurer of the district upon its dissolution.

SYNOPSIS OF THE DRAINAGE LAWS OF LOUISIANA.

Prepared by Foster, Milling, Saal and Milling of New Orleans, per R. E. Milling, Esq.

The drainage laws of the State of Louisiana are embodied in Article 281 of the Constitutions of 1898 and 1913, as amended at the General Election held in November, 1914, said amendment being embodied in Act 192 of the Acts of the Legislature for the year 1914; Act 317 of 1910, as amended by Act 219 of 1912, 227 of 1914, and 77 of 1916; and Act 90 of 1916. See also Act 256 of 1910, as amended by Act 218 of 1912, which is the Special Election Law under which elections are held in drainage districts.

Drainage Districts in Louisiana are by the above mentioned ARTICLE OF THE CONSTITUTION declared to be minor political subdivisions of the State. They are invested with the taxing power. They, in fact, have the same power to tax, when authorized to do so under the Constitution and laws of Louisiana, as a municipality. They are, therefore, authorized to impose both taxes and forced contributions, acting within the power delegated by the Constitution and laws of the State.

FORMATION OF DRAINAGE DISTRICTS.

The Constitution recognizes the right of Police Juries to create drainage districts. (The Police Jury is the Parish Legislature). They may be formed by such Body upon its own initiative or upon the petition of landowners. It is not necessary, however, that there be a vote of the property taxpayers in order to create a drainage district. The district once being created, bonds can be issued for drainage work, and taxes levied for the purpose of paying the principal and interest of said bonds and maintaining the drainage, as follows:—

(a) For the purpose of establishing a GENERAL SYSTEM OF DRAINAGE, bonds may be issued not to exceed ten per cent. (10%) of the assessed value of the property of the district, and in order to pay this bond issue in principal

and interest, an annual tax not exceeding 10 mills on the dollar of the assessed value of the property shall be levied by the governing authority of the drainage district in an amount sufficient to pay the interest and principal of the bonds due that particular year as long as any bonds are outstanding. This is a tax in contemplation of the law, as distinguished from a forced contribution, and is levied upon all property subject to State taxation situated within the drainage district.

(b) For the purpose of GRAVITY DRAINAGE, the board of drainage commissioners upon the petition of land owners, or upon its own initiative, may order an election for the purpose of taking the sense of the property taxpayers qualified as electors under the Constitution and laws of the State of Louisiana, to determine whether they will vote an acreage tax or forced contribution not to exceed 50 cents per acre for a period not exceeding 40 years, which acreage tax shall be imposed upon each acre of land located within the drainage district SUSCEPTIBLE OF GRAVITY DRAINAGE. This tax may be imposed and collected from year to year and used for drainage purposes, or the voters at the election at which the tax is voted, or at any other election similarly called and held, may fund the avails of this acreage tax into bonds which shall run no longer than the duration of the tax; but this tax and bond issue must be imposed upon lands susceptible of *gravity drainage* and can be imposed only *by a vote* of the people; except in cases where taxes have been levied and bonds issued by a vote of the people and eighty per cent. (80%) of the drainage system has been completed, the commissioners, for the purpose of perfecting and completing such system, may, without an election, buy additional taxes and fund the avails thereof into bonds, provided all taxes do not exceed 50 cents per acre.

(c) When the character of the land is such that it must be leveed and pumped in order to be drained and reclaimed, then the mode of issuing bonds and levying a tax or forced contribution to pay the same, is by a petition of landowners

owning in area not less than a majority in acres of the land affected by the drainage. (The statute requires that there shall be two-thirds of the acres petitioning for the bond issue, instead of one-half as authorized by the Constitution). When this petition is presented, the drainage commissioners refer it to the Board of State Engineers, with a request that the Board make an investigation and report as to the feasibility of the project and cost. If the Board's report is favorable, then the drainage commission issues bonds against each acre of land situated within the drainage district, and as long as any bonds are outstanding, each year levies an acreage tax or forced contribution sufficient in amount to pay the interest on the debt, the fraction of the principal due that year and the cost of maintaining the drainage. So, the limit of the bond issue is really fixed in the amount of tax authorized to be imposed, which is limited to \$3.50 per acre per annum. If the report of the Board of State Engineers shows that the cost of reclamation would be such that the annual payment to discharge the same, including the cost of maintaining the drainage, would not be well within the \$3.50 per acre, it would report against the feasibility of the project.

Either of the modes for raising funds for drainage purposes indicated in paragraph (a) and (b) may be resorted to for gravity drainage, but when the land is not susceptible of gravity drainage, then the mode set forth in paragraph (c) is the only means of issuing bonds or levying forced contributions against the property.

SYNOPSIS OF THE DRAINAGE LAWS OF MINNESOTA.

Prepared by William A. Watts Esq. Duluth, Minn.

Under the laws of Minnesota, proceedings for the establishment and construction of the class of public drains which are financed with proceeds derived from the sale of municipal bonds are instituted upon petitions "signed by not less than 25% of the owners of the land described in such petition, but in no event shall more than eight signers be required," or by the duly authorized officers of certain municipal and other corporations named in the Drainage Laws.

If the lands to be affected lie wholly within one county the petition may be addressed to the Board of County Commissioners and filed with the County Auditor, or to a Judge of the District Court for that county and filed with the Clerk of Court, — the Boards of County Commissioners and Judges of the District Court having concurrent jurisdiction. If the lands to be affected lie within two or more counties, the proceedings must be had before a Judge of the District Court of one or more of the counties. Where the proceedings are before a Board of County Commissioners the ditch is known as a county ditch, and where before a Judge of the District Court as a judicial ditch.

The petition should briefly set forth the necessity and advantages of the proposed drain, describe the lands liable to be affected, and the starting points, routes and termini of the ditches, laterals and branch which will probably be required to best effectuate the purpose of the drain, and show that the construction thereof will be of public benefit or promote the public health.

At the time of filing the petition the petitioners must also execute and file a bond, to be approved, as to sureties and amount, by the County Auditor in case of a county ditch, and the Clerk of Court in case of a judicial ditch, payable to the county, or in case the lands to be affected lie in more than one county, to the counties, and conditioned

upon the payment of all expenses in case the ditch is not finally established.

If, upon filing a petition and bond, it appears probable, or even at all likely, that the drain prayed for will be practicable and will serve a public purpose, the County Board or Judge of the District Court, as the case may be, appoints an engineer to make surveys of the lines of the proposed ditch, laterals and branches described in the petition, and such other lines and areas as may enable him to determine how and where ditches should be located in order to obtain the best results in draining the lands originally intended to be drained by those ditches described in the petition.

Such engineer, before entering upon his duties, must take oath that he will perform his duties according to law, and file a bond in the sum of \$5000.00, conditioned upon the proper performance of his duties.

The engineer makes and files in the office of the County Auditor or Clerk of the District Court, as the case may be, a report on his surveys, consisting of a map showing the location of the ditches recommended by him, and plans and specifications therefor, and the estimated cost thereof. He is not limited to making a survey and report upon the ditches described in the petition, but should report upon and recommend the construction of such ditches as will give the best results. He may when necessary extend the outlet for his ditches beyond the limits described in the petition in order to obtain a suitable outlet, and may, if he finds it desirable, have several outlets. Such variations from the routes described in the petition, and such additional ditches, may be ordered constructed under the particular proceeding, as will best drain the lands intended to be drained by the ditches called for in the original petition, and render the improvement of the greatest practical utility.

In proceedings for a county ditch, at the time the engineer is appointed or within ten days thereafter, and in case of a judicial ditch, at that time or at such time thereafter as the Court may deem advisable, three disinterested parties, resident free-holders of the county or counties in

which the ditch is to be located, and not of kin to any of the parties interested, are appointed "viewers."

Within five days after the filing of the engineer's report, the Auditor or Clerk of Court, as the case may be, notifies the viewers of their appointment and of the time for their first meeting. Before proceeding to the performance of their duties they qualify by subscribing and filing their oath of office. In case any of the viewers appointed fail to qualify the Auditor or Clerk of Court, as the case may be, may designate some person having the proper qualifications, to fill the vacancy.

The viewers then make and file their report, giving the description of each tract of land which will be benefited or damaged by the construction of the ditch, or ditches, planned and described in the engineer's report; the amount of benefits which each tract of land will receive, including the value of lands added thereto by the drainage of meandered lakes; the total amount of benefits which will be derived from the construction of the ditch or ditches as so planned; the total amount of damages awarded by them, and the cost of lands to be taken for right-of-way; and they also state whether or not, in their opinion, the estimated cost of such ditch or ditches, including the damages awarded and cost of lands taken for right-of-way, will be greater or less than the benefits to be derived therefrom.

Within three days after the viewer's report is filed, the County Auditor, in case of a county ditch, calls a special meeting of the Board of County Commissioners for the purpose of conducting a hearing upon the petition, report of the engineer, and report of the viewers, and publishes, posts and mails the Notice of such meeting. In case of a judicial ditch, the Clerk of Court notifies the Judge of the filing of the viewer's report, and he thereupon makes an order fixing the time and place of hearing and the Clerk gives Notice thereof in the manner prescribed by law. The Notice of hearing contains among other requisites a description of the starting points, routes and termini of the ditch, laterals and branches described in the engineer's report; a description of the governmental sections of land over

which the ditch or any part thereof is surveyed and should contain a description of all other governmental sections affected.

The engineer or his deputy and at least two of the viewers must be present at this hearing. All parties interested may appear in objection to the ditch, or to the reports of the engineer and viewers, or any part thereof, or to the amount of assessments against particular tracts, etc. After hearing the evidence adduced, the Board of County Commissioners or Judge of the District Court, as the case may be, determines the correctness of the reports and orders such amendments thereof as justice may require. If it appears that changes should be made in the plans and specifications of the ditches, the engineer's report may be ordered amended forthwith, or if it becomes necessary for him to make further surveys an adjournment may be taken to such time as will enable him to do so. The viewer's report may likewise be ordered amended, and assessments may be increased or diminished, but no assessments can be placed against lands in governmental sections not described in the notice, unless new notice of another hearing is given. When the reports of the engineer and viewers are found to be complete, just and correct, and the estimated benefits from the ditch greater than the total costs thereof, and that the work will be of public utility or benefit, or promote the public health, the County Board or Judge, as the case may be, makes an order containing such findings and adopting and confirming such reports, and orders the ditch constructed accordingly. No appeal lies from the order establishing the ditch though parties may demand a jury trial on questions of benefits and damages assessed and awarded.

If the viewers in preparing their original report are unable to agree, each viewer states his finding separately therein, and the County Board or Judge, as the case may be, determines what the proper finding shall be, from the evidence adduced at the hearing.

Under Acts of the Legislature and Congress, lands owned by the State of Minnesota and government lands may be

assessed for drains in the same manner as other lands. Assessments against unsold state lands are paid by appropriations of the Legislature, and if government lands are not acquired by private interests by the time the first assessment, or interest thereon, falls due, the lands may be sold at public sale. Public and corporate roads benefited by the construction of drains may also be assessed, and though the drainage laws provide for the assessment of railroads for benefits accruing to road beds, attempts to collect the assessments have failed,—railroads paying a gross earnings tax, on property used for railroad purposes, in lieu of all other taxes and assessments in this state.

On filing the order establishing the ditch, the County Auditor, or in case of a judicial ditch in more than one County, the County Auditors of the several Counties, meeting in the office of the Auditor of the County in which the proceedings were had, advertise for and receive bids for the work. No bid can be entertained which will bring the total cost of the ditch above the total benefits shown by the viewers' report, or if the engineer's estimate is more than thirty per cent less than the amount of the bid. The contractor receiving the work becomes a public official and gives an official bond, within the meaning of the laws construing official bonds of public officers, conditioned upon the fulfillment of his contract.

As soon as the contract is let and the cost of the ditch determined the County Auditor of each county in which benefited lands lie computes the assessments on such lands,—the assessment against each tract bearing the same proportion to the amount of benefits assessed against that tract in the viewers' report as the cost of the ditch bears to total amount of the benefits shown by the viewers' report—and on completing the same records the lien statements in the office of the Register of Deeds.

Assessments are paid in ten annual installments, unless at the time the drain is established the County Board or Judge directs that the assessments be paid in fifteen annual installments, the first thereof falling due five years after November first following the filing of the lien statements

in the office of the Register of Deeds. Until the bonds are sold the assessments bear interest at a rate fixed in the Order establishing the ditch, and thereafter at the same rate which the bonds bear, not exceeding six per cent per annum.

As soon as practicable after the contract is let, the Board of County Commissioners, in case of a County Ditch or a judicial ditch wholly within one county, issues bonds for the total cost thereof. In case of a judicial ditch in two or more counties, the Judge, in the Order establishing the ditch, or thereafter upon notice to the County Auditors, determines the proportion each county will have to pay toward the ditch, and the County Boards thereupon issue bonds for the respective amounts required of them,—the share which each county bears being proportionate to the amount of benefits which lands therein receive to the total amount of benefits.

The moneys are then placed in the general ditch fund of each county and paid out for the work on orders of the proper officials. In case of a judicial ditch the Judge passes upon and allows all bills and estimates, and the County Board does the same in a County Ditch proceeding.

The bonds issued for the construction of these ditches have been held to be direct and general obligations of the County issuing them. The county must pay the bonds as they fall due and reimburse itself by collecting the assessments levied against the lands benefited. If the assessments or interest thereon are not paid when due the lands may be sold for non-payment thereof, in the same manner as for non-payment of other taxes.

By Act of the Legislature passed some years ago a commission, consisting of the governor, state auditor and secretary of state, known as the state drainage commission was created, which was given the power to institute proceedings for the establishment of ditches, particularly such as will drain lands owned by the State of Minnesota. The commission employs an engineer and such other agents and assistants as it may find necessary and their salaries and expenses are paid out of moneys appropriated therefor by the Legislature.

Under this Act the commission may file a petition for a drain with the Judge of the District Court of one of the counties where it is proposed to locate the same. This petition must be accompanied by a map showing the routes of the proposed ditch, laterals and branches and estimates of the cost thereof. No bond to pay the preliminary expenses in case the ditch is not finally established need be filed as is required in the case of county and judicial ditches.

On filing this petition the court appoints viewers who make and file a report similar to that filed by viewers in county and judicial ditch proceedings. A hearing is then had on the petition and viewers' report and subsequent proceedings are substantially the same as those in proceedings for the establishment of judicial ditches.

Assessments are levied against the lands benefited and are collected, and bonds issued, in the same manner as in judicial ditch proceedings. The drains established upon petitions of the state drainage commission are called State Ditches.

Prior to the year 1910 a large number of state ditches were established but since that time few, if any, proceedings have been instituted therefor. The state still owns large tracts of swamp land which must be drained before it can be sold and used for agricultural purposes, but unless the Legislature makes larger appropriations for the work of the commission than have been made in the past few years, it is not probable that any new work will be commenced by it.

SYNOPSIS OF DRAINAGE STATUTES OF MISSISSIPPI.

Prepared by CHARLES and RUTHERFORD, 807 Merchants-Laclede Building, St. Louis, Mo.

As in many of the States, there are several statutes on drainage in Mississippi. Enacted at different times, they are all collected in Hemingway's Annotated Mississippi Code, 1917, Chapter 99 (sections 4261 to 4487). Specifically these statutes are the following:

Mississippi Code 1906, Chapter 39, amended by Laws 1912, ch. 196, (Hemingway's Code, sec. 4261 et seq.)

Laws 1908, ch. 141 (Hemingway's Code, sec. 6880).

Laws 1912, ch. 195, amended by Laws 1914, ch. 269. (Hemingway's Code 1917, secs. 4434-5583, 4486, 4487).

Laws 1912, ch. 197, (Hemingway's Code 1917, secs. 4333-4395).

Laws 1912, ch. 198 (Hemingway's Code 1917, secs. 4396-4432)..

Laws 1917, ch. 28.

Laws 1918, ch. 210.

CHAPTER 39, CODE OF MISSISSIPPI, 1906, AS AMENDED.

(Hemingway's Annotated Code, 1917, sec. 4264 et seq.)

Drainage districts may be organized to reclaim wet, swamp, or overflowed lands for agricultural or sanitary purposes or both.

Proceedings are begun by the filing of a petition, signed by a majority of the adult owners of land to be affected, who must also own at least one-third of the land, or by one-third of the owners in number if they own one-half of the land, with the clerk of the chancery court of the county or judicial district in which the greater part of the land is situated, setting forth the proposed name of the district, its necessity, a description of the land included, the names and addresses of the owners if known. The court sets a day for hearing which may be postponed for cause.

The clerk then gives three weeks notice by publication and by posting notices at the court house door and ten other public places in each county, and by mail to non residents, if the addresses are known, stating in what court and when the petition was filed, giving a general description of the district and the time of hearing.

On the day set the chancellor determines three questions only: First, whether there are sufficient signers, second, whether sufficient notice has been given, third, whether the lands in the proposed district or any part of them need a combined system of drainage. Any interested person may contest the petition. If the petition is sufficient, an order to that effect is entered and it is referred to the drainage commissioners of the county for further proceedings according to law and a day set for them to meet. If the petition is insufficient as regards signatures or the giving of notice, the matter may be continued to allow the correction of the defects.

The commissioners themselves meet, subscribe to an oath, and go upon and examine the land. A majority constitutes a quorum. They determine, first, whether drainage is possible; second, the location and size of the drain; third, the probable total cost; fourth, what land will be injured and the amount of the damage; fifth, what land will be benefited and whether the aggregate amount of benefit will equal or exceed the cost. They may employ an engineer to aid them and to make maps, profiles and estimates. They also report whether any of the land included will not drain into the proposed drain; and if any will not, recommend their exclusion from the district. The clerk of the Court, upon the filing of this report, gives three weeks' notice by publication, stating the time of filing the report, that a map and description of the district is in his office, a description of lands to be excluded, and the day application will be made for confirmation; when any person interested may contest the confirmation or seek to have the report modified and may offer competent evidence. The day must be in the next term or some day in vacation, when the chancellor may appear and hear the matter.

If the Court or chancellor finds that the district should be organized, he confirms the report and declares it organized, or he may modify it or refer it back to the commissioners for correction and reformation. (The order of confirmation may be in the form provided by the statute). The district then becomes by operation of law a body corporate with the usual general powers of corporations and power to do all acts and things necessary for its purpose. As soon as practicable, the commissioners examine the land and estimate the benefits to each individual tract, and also the damages, and estimate and assess the costs of the drainage apportioned to each tract of land, and setting them all down in an assessment roll.

To acquire rights of way the commissioners may at any time after the organization of the district appraise the value of any land taken or to be taken for the improvement and the damages resulting to the owner. This appraisement is certified and filed with the clerk of the chancery court, who at the request of the commissioners sets a day for the hearing of objections. The land owners or other persons interested are summoned to appear. Notice to non-residents of the state or unknown parties interested may be given by publication. If no objections are filed the appraisement is confirmed by the court, and upon payment of the sums named to the clerk the district may enter upon and take title to the property. The decree and the clerk's receipt thereon for the money paid are recorded.

If objections are filed the court hears them without a jury and confirms or modifies the report as is equitable.

No default judgment can be taken against a resident of the state unless service of summons was had at least two days prior to the return day or against non-residents or unknowns unless there has been due publication.

Any person aggrieved by the decree may appeal in ten days. The appeal does not hinder the district in doing any act necessary and proper in the construction of the system.

The district may also proceed to acquire land before the court of eminent domain.

Expenses due to the organization are repaid by the commissioners as part of the costs of the district if it is organized. If not, the court may organize the district to raise the funds as may be equitable and levy an acreage tax.

The assessment roll is filed with the clerk and recorded. He then fixes a day for hearing objections, not less than fifteen nor more than thirty days distant, unless the court direct or the commissioners request a longer time, and give notice once a week for two successive weeks by publication or posting ten notices if there is no newspaper in the county.

At this hearing all persons interested may object to any of the estimates or assessments of the commissioners; and the court, after hearing evidence, may direct the commissioners to alter them as seems equitable. After the objections are heard and determined, the assessment rolls are confirmed, and stand as final and all persons interested are concluded by the assessment, and its validity may not be attacked in any court, except that within ten days an appeal may be taken to the Supreme Court, and as to those not appealing the assessment is final.

The court may at this time order the assessments to be paid in installments, in such amounts and at such times as it deems best, otherwise they become due at once. The assessment or the installments bear six percent interest from the time of confirmation until paid, but the whole with interest accrued may be paid any time within 30 days after confirmation or before any bonds are issued. The assessment becomes a lien on the land as other taxes and if unpaid on the day designated the sheriff advertises and sells the property as in the case of State and county taxes.

On or before the first Monday in September of each year the commissioners levy a tax in proportion to the installment of benefits authorized to become due that year. This is certified to the supervisors, whose duty it is to make a levy in accordance with the assessment sufficient to meet bond obligations. The levy is apportioned to each tract of

land or other property as were the benefits and cannot be in excess thereof. This levy is certified and filed with the sheriff who collects it.

At the time of the confirmation the court may provide for all details connected with the date, maturity, form and amount of bonds, and the fixing of the installments for their payment, or it may take these matters under advisement.

The County Treasurer is the treasurer of the district.

After the district has been organized and the rights of way obtained, the drainage commissioners make an estimate of the cost, including all fees and expenses; or, if an estimate has been made, they revise it. They then order that so much of the benefits assessed as are sufficient to defray the costs be paid in cash or in installments, not exceeding twenty years, bearing not more than 6% interest. Or they may order that bonds for not more than eighty percent of the assessed benefits shall be issued and paid. These may be payable in from one to twenty years from date with interest not exceeding six percent payable annually or semi-annually as the court directs, but coupons for any part of a year may be attached to bonds maturing the first year. If the bonds up to eighty percent of the amount of benefits are issued, the commissioners may order the remaining twenty percent to be paid in cash in their discretion. If the original levy proves insufficient, additional levies may be made, provided that their aggregate does not exceed the amount of benefits assessed. Or additional bonds may be issued provided that the aggregate amount of bonds does not exceed eighty percent of the amount of benefits. The additional levy may be payable in cash or in not more than ten installments, bearing not more than six percent interest.

The treasurer must keep books and pay money on an order of a majority of the commissioners.

If the commissioners issue bonds, they may sell them to the best advantage, but not at less than par, except with the approval of the chancellor, and the whole sum realized is turned over to the treasurer, who must keep a registry of the bonds and their transfer. The remaining twenty per-

cent of such assessment, for which bonds were not issued, shall, by the levy of the commissioners, be provided to be paid in cash within not less than four months from the date of filing said levy, to be used for various incidental expenses. When this has been done, and bonds for 80% of the assessment have been sold, the commissioners may issue and sell bonds, notes and other objects of indebtedness for the 20% or any part thereof, bearing 6% interest. They must first give ten days' notice and obtain the approval of the chancellor. The bonds, etc. are a lien on the land assessed and are incontestable.

The commissioners advertise for bids for the work and let the contract to the lowest responsible bidder. But they may reject all bids.

They and their successors have charge of the drains in perpetuity and may do all that may be necessary in surveying, constructing, repairing, altering, and so forth. They are required to keep the work in good condition and may levy additional assessments to raise money necessary for its maintenance.

All landowners may construct branch drains to drain their lands into the main drain.

Actual damages allowed landowners because of the construction of ditches across their lands must be paid in cash.

The commissioners make annual reports of all moneys received and expended for each district and sub-district. They may make additional levies, but any aggrieved land owner may object in court.

Provision is made that if the right of way of any railroad is crossed, a special report is filed, notice is given to the railroad, and damages awarded. The same procedure and a final adjudication made and benefits assessed against the railroad and damages awarded. The same procedure is followed if it is necessary to cross a public road.

If any owner of lands outside the district makes connections with the district or his lands are drained through other ditches into the ditches of the district, provision is made for an assessment against such land.

Any person aggrieved by a decree in connection with a district from which an appeal lies must prosecute it in ten days or be estopped to contest it.

This act does not affect districts organized under other laws. Any such district may come under this law if ten percent in number of the land owners file a petition asking it. Notice is then given by publication for two weeks to show cause why the petition should not be granted. Unless it affirmatively appears that a majority in number of the landowners oppose it, the petition is granted.

These proceedings are all in rem and publication is a sufficient notice.

At the hearing of the petition for organization any land owner may add his name and ask that his lands be attached to the district.

Additional assessments may be made for additional work done or to be done or in case the cost has been underestimated, in the same manner as the original assessment.

All bonds sold by the district at face value and proceeds paid into the county treasury for the use of the district prior to the passage of this act are declared valid. Proceeding to organize a drainage district declared to be in rem and failure to mail sufficient notice to non-residents do not invalidate the district acts.

The terms "benefits" and "betterments" are synonymous, and the word "ditch" covers "levee." Controversies between districts are determined by the Chancery Court which has power to appoint a commissioner to determine all matters under Chapter 39, Code of 1906, and report his findings for confirmation. Such findings may be excepted to as in case of reports of other commissioners. Costs incurred before such commissioner and a compensation for him to be fixed by the court are taxed against the district.

CHAPTER 195, LAWS 1912.

(Amended, Laws 1914, ch. 269.)

Hemingway's Code 1917, sections 4434-4483, 4486, 4487.

When 10% of the land owners in a proposed district petition the board of supervisors to establish a drainage district, describing generally the region to be embraced in the district, the board causes notice to be given in a newspaper for two successive insertions to the landowners in the district designating a day for hearing the petition and all objections. If a majority of the landowners of the district, in number and also in amount of holdings, object, the board determines whether it will proceed with the organization of the district. If they decide to proceed, or if such a majority does not object, an engineer is appointed, and also, if requested by the petitioners, three landowners of the proposed district, as temporary commissioners, may be appointed to help him, all giving bond. The term of these commissioners expires when the district is permanently organized. The engineer then makes a survey and a preliminary report, setting forth the region that will be benefited, the character of the proposed improvement, and its cost, and making such suggestions as to the size and location of the ditches as he thinks advisable. The expenses are paid by the county, to be refunded by the district, or, if commissioners are appointed, money may be borrowed and evidences of indebtedness issued running not more than two years and bearing not more than 6% interest, to be paid out of the funds of the district, if organized; or, if not organized, by an acreage or advalorem tax on the lands.

On the filing of the report the clerk of the board publishes a notice to the landowners in some paper of general circulation published in some one of the counties in which the district lies, by two insertions therein, designating a day not less than twenty nor more than forty days distant, on which they may show cause for or against the establishment of the district. On that day the landowners are heard and

if the board decides that it is for the best interest of the landowners and for the public benefit to establish the district, it is so ordered. The district is numbered or named by the board and may, by its commissioners and in its corporate name, do all acts and things for the accomplishment of the purposes for which it was organized, including the right to contract, and sue and be sued.

If the district includes land in more than one county, the same proceedings are had, but before the Chancery Court of any one of the counties in which the land lies. Notices are published in all counties.

The supervisors may be compelled to act by mandamus.

In case, however, the petition is signed by a majority of the landowners owning one-third of the land or by one-third of the owners who own a majority of the land, the board or the chancellor orders the establishment of the district without further inquiry, if it appears necessary for the promotion of the public health and for agricultural purposes, unless a counter petition signed by a like number is presented by the day set for hearing the petition. In the latter case the Board investigates as outlined above, and if it is for the advantage of the owners and for the public benefit, the district is established.

These petitions may be signed by women landowners, married or single, by guardians for their wards, and by trustees, executors and administrators for their estates and by corporations.

This order has the force of a judgment. If taken in 20 days, an appeal lies from an order establishing or refusing to establish the district to the chancery court, if the proceedings were before the supervisors; or to the Supreme Court if they were before the chancery court. If an appeal is not taken in twenty days, the order is conclusive.

When the district is established the supervisors appoint three landowners as commissioners, who constitute a body politic and corporate, by the name and style selected, who subscribe an oath, have a seal, make by-laws and regulations, elect a president and employ such persons as they

think necessary for the business, and do all things necessary to effect the purpose of this act not inconsistent with the laws. A majority of them constitutes a quorum. Their terms of office are two, four and six years and until their successors are qualified. Vacancies are filled by like appointments. But if a majority of the land owners petition for the appointment of particular persons, the supervisors appoint them.

The commissioners prepare plans for the improvements, showing the width, locations, and depth of the ditches, the work to be done in removing obstructions from water courses, building pumping stations, dams, flumes, flood gates and fences; and secure estimates of the cost.

The necessary expenses are taken as part of the cost of the improvement and if, for any reason, the improvement is not completed, are collected by an acreage or ad valorem tax on the land in the district.

The commissioners, as soon as they have formed the plan and ascertained the cost, file a report thereof with the supervisors, together with a map showing the location of the ditches and also specifications of the work to be done, the size of the ditches, the amount of earth to be removed and the probable cost.

The commissioners then make up an assessment book giving the description of each tract of land, the name of the owner according to the last assessment roll, the amounts of the benefits to be derived, the sum probably due the first year, and the damages, if any. Railroads are included in the assessments. Mistakes in names of owners do not vitiate the assessment.

If, at any time before or after the establishment of the district, the commissioners find that any land not included in the district will be benefited by the proposed improvement already made, they so report specially to the supervisors. Two weeks' notice is given to the landowners, by two publications of the filing of the assessment roll, to appear and offer objections to being included. The supervisors then investigate and if they find that the land will be

benefited, order that the land be included in the district. Either the landowner or the commissioners may appeal within twenty days. Any existing ditches useful to the district must be compensated for by the district.

The assessment is filed with the clerk of the board of supervisors and two weeks' notice given by two publications in newspapers in all counties having lands in the district designating a day for hearing not earlier than ten days after the last publication (naming the day), describing the land in the district and stating that it has been assessed for drainage purposes, and that the owners may appear and present complaints. At the hearing the objection may be made that the assessments are injurious to the objector or that the assessments are inadequate on other lands in the district. These objections are heard and such changes made as the supervisors find to be just, and the board's decision is final with the force and effect of a judgment. An appeal lies, if taken within twenty days, by the landowner or by the commissioners to the chancery court, or the Supreme Court. This assessment is final and no new one may be made unless the commissioners find it "necessary to raise the assessments of benefits to the land because of additional benefits to the lands other than those assessed;" or unless it is absolutely necessary to maintain the improvements.

A property owner is held to have acquiesced in the assessment of benefits or in the failure to assess damages as made by the commissioners, unless within thirty days from the filing of the assessments he demands in writing an assessment by a jury, in which event the land is condemned according to the regular proceeding in the circuit court for the condemnation of lands for public use, as provided in chap. 43 Code of 1906, and amendments thereto. Damage awards may be paid to the clerk and the work proceed.

The commissioners may, however, adopt the following method of acquiring land and making compensation: They make an appraisalment after the organization of the district, of the value of any land taken or to be taken, specifying the

particular purpose for which and the extent to which the easement is desired and representing only the damage resultant from the use specified. This appraisement is certified to the clerk of the chancery court and a summons issued to the land owners and guardians of infant land-owners to appear on a designated day. If the owner is a non-resident of the state, service may be made upon an agent in charge of the land or by publication as in chancery suits stating the purpose to be to confirm the report of the commissioners, the name of the owner, if known, and post office address, if known, and a list of the land, by section numbers, through which ditches run. A resident must be served at least two days prior to the return day. Any owner who is dissatisfied with the appraisement may object in writing on or before the return day. Guardians ad litem are appointed for infants. These objections, if any, are determined by the court or by the chancellor in vacation and a decree rendered confirming the appraisement with or without modifications. Appeals may be taken as provided in sec. 3, chap. 195, Laws 1912, but they should not hinder or delay any act necessary for the construction of the improvement.

Proof of publication is made as provided by sec. 1980 Code of 1906. Objections may be heard severally or as an entirety in term time or vacation, and a decree may be entered in entirety or in severalty confirming the report as made or amended as seems just.

The commissioners may, on paying the amount of damages named in the decree, enter upon and take title to the land condemned.

The district may, in addition to this method, proceed to condemn the land for rights of way by eminent domain in accordance with the proceeding provided therefor.

The district is a public corporation and political subdivision of the state and the commissioners are public officers of the state.

At the time of the filing of the assessment of benefits or thereafter, when called upon by the commissioners, the

supervisors enter an order, with the force of a judgment, making a special assessment for the cost of the improvement, together with a sum not less than 10% added for contingencies.

The levy is apportioned to each tract of land according to the ratio of benefit accruing to that tract. It is payable in annual installments not exceeding 10% of the total for any one year, but any landowner may pay the whole or any part of his assessment at any time he sees fit, provided it is before bonds are issued. This levy is a lien on the property in an amount not greater than the amount of benefit received from the time it is levied until fully paid with all costs and benefits and superior to all demands, executions, encumbrances or liens whatsoever. The remedy against the assessment is by appeal, which must be taken within twenty days. It is the duty of the supervisors to make an annual tax levy not exceeding the amount assessed as above for the year to meet the obligations of the district. Any property owner of the district may by mandamus compel the supervisors to levy this assessment or tax.

It is the duty of the commissioners to prepare an assessment roll, showing the lands assessed, the names of the owners, and the benefits, damages, and the tax for the current year against each tract. This is certified to the clerk of the board of supervisors, who in turn transmits it to the tax collector. It is his duty to collect the tax and he is liable on his bond for any taxes lost to the district, together with damages thereon at the rate of 30%, and interest at the rate of 6% per annum on the principal and damages, and also for any failure to pay over taxes he has collected.

The County Treasurer is treasurer of the district unless the commissioners select some one else.

He, or whoever is selected, must give a bond to the district and is subject to removal by the commissioners. He may pay out money only on the order of the commissioners. The commissioners also select a depository for the funds.

If the first tax levy proves insufficient, the commissioners report the deficiency to the supervisors who make an additional levy, collectible in like manner as the first one. If any work is begun which is not completed and paid for out of the first or other levy, it is the duty of the supervisors to make such levy for its completion and from year to year until completed, provided that the total levy does not exceed the value of the benefits. This may be enforced by mandamus by any party interested.

The commissioners have control of the construction of the improvement and may advertise the contract, and must advertise, if the work exceeds one thousand dollars; and may accept or reject proposals.

The supervisors may remove any commissioner for incompetency or neglect, but only on a charge in writing and after hearing the commissioner.

All contractors must give bond.

The commissioners may make all contracts in the prosecution of the work as serve the public interest and may from time to time draw warrants in favor of the contractor for not more than eighty per cent. of the work actually done, reserving the remainder until the work is completed and free from liens.

The commissioners may borrow money to prosecute the work and issue negotiable evidence of indebtedness or serial bonds. These bonds must not be for an amount exceeding the total amount of benefits assessed. They may bear not more than 6% interest; may be in such sums and denominations as the board of commissioners thinks best, not less than \$100; must be signed by the members of the board and bear the seal of the district; may be payable to bearer; they must not run for more than thirty years; they may mature serially in such numbers as the board may elect, a portion maturing each year as the assessments are collected. Interest coupons may be attached bearing the facsimile signatures of the members of the board. They may be sold in any market, at not less than par value.

The clerk of the board of commissioners keeps a complete record of all bonds and coupons. The minutes of the board also must show a complete record of each bond. The board may irrevocably pledge the full faith, credit and resources of the district and all assessments under this act for the prompt payment of the bonds and coupons.

The commissioners may issue negotiable evidence of indebtedness to contractors at not more than 6%.

No member of the board is liable for any damages sustained in the prosecution of the work, unless he acts with a corrupt and malicious intent.

At any time the commissioners may alter the plans of the improvement. Notice by two insertions in some newspaper is given and anyone deeming the assessment to have become inequitable, because of the change, may petition the board of supervisors for a re-assessment, and both the property owner and the commissioners have the right of appeal. If bonds have been issued, however, no reduction in the assessment shall endanger the security, but shall be allowed as damages and be subordinate to the rights of bondholders. No such change of plans shall be made as will lower the efficiency of the system or jeopardize the rights of any bondholders. This question may be raised by any landowner before the supervisors or the chancellor, with right of appeal as in other cases.

Any landowner may build ditches to drain his land into the public ditches and an intervening landowner may be compelled by the commissioners to allow a right of way in accordance with the eminent domain law. Any benefits to the intervening lands are deducted from the damages. No one outside the district may drain into the improvement without paying compensation to be fixed by agreement or by jury.

If necessary to reach a proper outlet or otherwise to secure the object of the improvement, the commissioners may construct ditches and do other work outside the district and may condemn a right of way according to the proceedings now provided. Any such drain becomes the property

of the district, and no one not assessed can drain into it except by the consent of the commissioners.

The drainage district continues in existence after the completion of the improvement in order to preserve and maintain it. The commissioners may borrow money and issue bonds as hereinbefore provided. They may also petition the supervisors to levy additional assessments on the benefits. In the latter case notice must be given and any land owner may resist the levy. The same rights of appeal are given as in other proceedings.

The taxes levied under this act are payable at the same time the state and county taxes are, and the lands may be sold for non-payment of these taxes as for state taxes, the deeds having like force, and landowners the same right of redemption.

Bonds and evidence of indebtedness are a lien on all lands and railroads, taxable by this act, to an amount not exceeding the benefits assessed against the property.

It is the duty of the commissioners, enforceable by mandamus, to levy an assessment annually as long as necessary for the payment of bonds or other obligations and interest.

The entire revenues of the district from all sources are pledged to the payment of the principal and interest of bonds and other evidences of indebtedness and also all taxable real estate in the district to an amount not greater than the benefits assessed, and the commissioners must set aside from the first revenues from any source, sufficient to meet the obligations.

The validity of bonds sold under this act can not be questioned in any court, if sold in accordance with this act at their face value and the proceeds paid to the district.

No errors in names or residences of owners or in descriptions of land will invalidate an assessment, if a description is given sufficient to ascertain where the lands or railroads are situated.

The commissioners may carry the ditches across any highway and cover them with bridges. There is a provision made for constructing the ditches across the rights

of way of railroads, telephone and telegraph lines and tram ways.

No appeal taken under this act can delay the organization of the district or the progress of the work.

This law is additional to other drainage laws and does not repeal them. A district organized under another law may come under this law as follows: If a third of the landowners, owning a majority of the acreage or a majority of the landowners owning a third of the acreage, petition the supervisors to come under this act, notice is given by two weeks publication stating the time of hearing and the object of the petition. The board hears the landowners and receives evidence and may grant or deny the petition as seems advantageous to the owners and the public. If a majority of the land owners or the owners of a majority of the acreage petition for the adoption of this act, the board must order its adoption. The district then has the same rights as if originally organized under this law and the supervisors appoint commissioners to carry on the work.

This law must be liberally construed to promote the drainage of wet and swampy land. The collection of assessments can not be defeated because of irregularities in the proceedings prior to the judgment confirming the assessment. If any assessment is void for want of notice, the commissioners may be allowed to give notice, have a hearing before the supervisors and a final judgment assessing the land.

A sub-district may be formed if one-third of the owners, owning a majority of the acreage, or a majority of the owners owning one-third of the acreage, in the proposed sub-district, being lands wholly or partially within a district, petition the supervisors for a sub-district, describing generally the land, and putting up a bond for the expenses of survey. The supervisors then order the commissioners of the main district to survey and ascertain what lands would be benefited, and give the general character and size, and cost of the improvements and other suggestions as they see fit. Two weeks' notice by publication of two insertions

is then given to the landowners in the sub-district, a hearing had, and other proceedings as in the case of the organization of a main district. The commissioners of the main district serve for the sub-district; bonds of the sub-district may be issued on the same procedure as in the case of bonds of a main district.

The subdistrict has the same power and authority as the original district.

Nothing herein prohibits the organization of a district wholly or partly within one already organized, but entirely independent of it. One-third of the land owners owning a majority of the acreage or a majority of the owners owning one-third of the acreage petition the board of supervisors (if the land is all in one county) or the chancery court of any county of the district (if the land is in more than one county) and proceedings are had in all respects similar to the formation of an original district under this act. Such a district has all the rights, privileges and powers of any other district, may levy assessments, issue bonds, etc., independently of any other district. But lands in it and also in the original district remain liable for the tax levies of the original district.

Any hearing provided to be before the chancellor may be before a special commissioner whom he appoints and who reports to the chancellor for confirmation, subject to exception.

The provisions of sections 2 and 3 chap. 195, laws 1912 and amendments apply to subdistricts, and bonds as issued as in a main district.

Appeals allowed must be taken within the time herein fixed and if taken from an order made by the board of supervisors shall be perfected as in an appeal from an order of the board approving tax assessments; and if taken from a chancery court shall be prosecuted as in appeals from other decrees of said court and within the time fixed by this act.

CHAPTER 197, LAWS 1912

Hemingway's Code, 1917, sections 4333-4395.

In addition to other methods, drainage districts may be organized as follows:

By presenting to the Chancery Court, or any county court or court of any judicial district, a petition signed by 10% of the adult landowners of the proposed district in number, acreage, or value, setting out the proposed name of the district, the necessity for it, a general description of the land to be included, the names and addresses of the owners, if known, the tax receipts or assessment rolls of the county or counties, of the proposed district, and praying for the organization thereof.

This may be done to organize districts or to repair or improve natural drains or water courses or combined systems of reclamation, (a) by posting at court house, of the county or counties having land in the district, and at each post office in the district, and (b) by publication once each week in a newspaper in each such county, if there be one, (c) by mail, postage prepaid, to each non-resident, when his post office address can be ascertained from the county land records.

On the filing of this petition the clerk of the chancery court gives at least ten days' notice of the hearing, by publication.

On the filing of the petition, the clerk notifies the chancellor or chancellors of the chancery district in which the drainage district lies, who, within ten days, appoints three drainage commissioners for each county in which the drainage district lies. Twenty per cent. of landowners affected by the drainage district may petition for election of commissioners. The commissioners must be resident landowners of the county, and hold office for one, two and three years. Their successors are appointed in like manner and hold office for three years each. Within five days they must organize by selecting one of their number as president. The clerk of the chan-

cery court is ex-officio clerk of the board of commissioners. They constitute a court of record, and have a seal inscribed "County Board of Drainage Commissioners of ——— County, Mississippi." Two members constitute a quorum. They have power to issue necessary process, compel attendance of witnesses and do all things necessary to carry out this act.

They have jurisdiction of all districts organized under this act and of the construction and maintenance of all drains, natural or artificial, coming under this act, throughout the county.

At the time and place of hearing set forth in the published notices the commissioners meet and hear the petition and the objections. At the first meeting, the only questions are, first, whether the petition has enough signatures, second, whether the proper notices have been given, as required by this act. If the county Board of Drainage Commissioners find these points in favor of the petition they enter an order to that effect. They then appoint district drainage commissioners, who must be residents of the county and owners of land in the district. The petition is then referred to them.

If the signatures or notice is insufficient the cause may be continued in order that the defect may be remedied. The affidavit of two or more signers acquainted with the district is prima facie evidence that the petition has sufficient signatures.

As soon as possible, or within such time as the county board may fix, the district commissioners examine the land and determine whether drainage is possible, the route, size and location of the ditches, the probable costs all told, what lands will be damaged and the aggregate amount, and what lands will be benefited and whether the benefit will equal or exceed the cost of construction. In doing this they may employ engineers and enter an order to that effect. They then appoint district drainage commissioners who must be residents of the county and owners of land in the district. The petition is then referred to them. A majority of the

district commissioners is a quorum. The district commissioners also report whether there is any land in the proposed district which will not be benefited and should be excluded.

They also prepare a map of the district. If the district is organized, the map is recorded. Upon the filing of the report the county board of drainage commissioners cause three weeks' notice thereof to be given, of the day when application will be made for confirmation, and that the interested parties may contest the confirmation of the report or seek to have it modified.

On the hearing the county commissioners may order the district organized, or they may modify the plan as laid out in the report, or they may refer it back to the commissioners for correction and reformation. If it is referred back, a new date for hearing is set and the same proceedings had without further notice.

If one-half the owners, who also own one-third of the acreage, or the owners of one-half of the acreage, being one-third in number of the land owners, file objections, the report is not confirmed and the district is not organized.

Unless an appeal is taken an order confirming the report is final.

CHAPTER 198 Laws 1912.

Hemingway's Code 1917, sections 4396-4432.

The Board of Supervisors of any county have jurisdiction to establish levee and drainage districts in their county and build, locate and establish levees, drains or canals, etc. to reclaim wet, swamp or overflowed lands, and such leveeing and drainage is declared of public benefit, and conducive to the public health, convenience utility and welfare. A petition is presented by a majority in number of the resident land owners, who own at least one-third of the land, so describing the land to be embraced as to convey an intelligent idea of its location and "the public health, convenience or welfare of which will be promoted by the drainage," and setting forth as far as possible the starting point, terminus and

branches of the drains and praying for a survey of the land. The petition must name three competent commissioners, to be appointed by the board, to hold office for four years, giving bond, whose duty it shall be to assist an engineer in ascertaining the boundaries and making a map of the district and performing such other duties as are imposed by this act.

The commissioners employ a surveyor or engineer who makes an accurate and detailed survey, showing the creek valleys, low lands or improvements contemplated. He obtains sufficient data to make accurate profiles and plans. Frequent bench marks are made on permanent objects, etc. A map of the district is made showing the location of the improvements and the boundaries of the district, the lands owned by each person, as accurately as may be obtainable from the records, designating the number of acres in section, township or range, the location of railroads, highways, incorporated towns or villages. With the map is filed a profile of each ditch, or channel as made, showing the grade and the number of yards of excavation or fill for each mile or fraction thereof and the plans and specifications and the estimated cost. The engineer and the commissioners personally examine the land and report and recommend whether in their opinion the drainage district is practicable and should be established.

If they report it to be practicable and conducive to the general welfare or benefit to the public health and recommend that the district be organized, the supervisors give notice by publication for three consecutive weeks in a newspaper of the county and by mail three weeks before the day of hearing to all owners whose addresses can be ascertained by diligent inquiry, and by posting a notice at the court house door, containing a general description of the boundaries of the district, its beginning and ending, the names of the principal streams to be improved and the day set for hearing the report.

At the hearing the board determines all objections and declares the territory as petitioned for, and recommended

by the engineer, to be a drainage district, and gives it a name, or number, unless a petition signed by a majority of the owners, representing at least three-fourths of the land in the proposed district is filed at least 15 days before the hearing, asking that the district be not declared established and the drainage tax not levied to carry out the work according to the report; or unless the proceedings heretofore are shown to have been illegal, imperfect or not in compliance with the law. The supervisors may make such orders as are necessary in order to have defects or imperfections in the work done by the engineer and commissioners corrected. If such an adverse petition is filed the supervisors then for that time shall refuse to establish the district, but the land is liable to be taxed for the expenses incurred up to this point. If then a majority of the owners representing at least one-half of the land embraced in any portion of the district file a petition showing definitely the portion of the district they wish to have declared a district, then the supervisors after giving notice as before, shall declare that part of the district as originally proposed to be a district, unless another adverse petition as above is filed.

The district established, the commissioners are appointed and give bond, and are created a body corporate under the name of the "Board of Drainage Commissioners of _____ District." They organize by electing a chairman from their number and a clerk, who shall not be the clerk of the board of Supervisors. The county Treasurer is ex-officio Treasurer of the commissioners. They may adopt and alter a seal. The clerk keeps an accurate record of all proceedings, expenditures, contracts, bonds, and files it with the chancery clerk in a book marked "Drainage Record." A complete list of the land in each district is recorded in this book and is notice to all the world.

Irrespective of whether the land is declared a drainage district or not the supervisors levy a special tax not exceeding 25c per acre for any one year on the land as shown by the survey to pay the expenses incurred up to the organization or abandonment of the district. The money may

be advanced by the supervisors to be repaid out of this tax or the board of supervisors may borrow money to pay preliminary expenses.

The commissioners assess, separately from the benefits, the damages to each tract of land because of land taken or resulting inconvenience, which they pay when funds come into their hands.

If a petition signed by three-fourths of the bona-fide land owners, owning at least one-half of the land is filed at least 10 days before the hearing of the preliminary report, asking that the benefit assessment plan be adopted, then that plan shall be adopted, but otherwise the flat acreage system must be used.

If the benefit plan is adopted, the commissioners estimate the benefits because of the improvement to each tract of land and divide it into 5 classes, A, B, C, D and E. Class A being that land which receives the greatest benefit and Class E being that land receiving the least.

The number of acres owned by each owner in each class and the total acreage shall be computed. The scale of assessment on the several classes shall be in the ratio 5, 4, 3, 2, 1, that is, as often as 5 mills per acre are laid on class A, four mills are laid on Class B, 3 mills on Class C, etc.

Any party aggrieved by the confirmation of the assessor's report may appeal to the chancery court.

This act is to be liberally construed. No collection of the assessment, where proper notice has been given, may be defeated because of any defect in the proceeding prior to confirmation of the report of the commissioners and the engineer.

If an appeal is taken and any person's assessment or liability is released or modified, the rights of no person other than the appellant are affected, and the failure to appeal waives all irregularities and illegalities. The remedy provided in the act is exclusive.

When sufficient money has been collected by the taxes or the sale of bonds, the commissioners appoint a superintendent to let contracts and proceed with the work. No

bid made in excess of the estimate of cost will be entertained except upon a showing that the estimate was below actual cost. Provision is made for the payment of the work as done, and for reletting the contract.

Rights of way may be obtained by agreement or by condemnation.

Benefits may be assessed to a railroad company and recovery had in an action for debt. Provision is made for appropriate proceedings in case the improvement crosses any highway or railroad and for the maintenance and repair of the improvement by the commissioners after completion.

Any owner assessed for the improvement has the right to construct ancillary drains for his own land and may, if necessary, enforce his right to do this over the land of others by court proceeding.

After the classification of the land and the fixing of the ratio of assessment and the fixing of the different classes, an assessment roll is made up, describing the lands, naming the owner, if possible, and the amount of the assessment against each tract. This amount is determined by the commissioners, estimating the total cost and assessing according to the classification and ratio above described. Three copies are made, one for the record, one for the supervisors and one for the tax collector. The supervisors' order to collect the assessment has the same force and effect as in the case of State and county taxes. Bonds are issued only if there is filed with the clerk of the board of supervisors a petition signed by a majority of the owners owning at least one-half of the land, naming the amount of bonds, when payable and the rate of interest. Notice is given by publication and by mail to all parties interested in the district, citing them to appear before the supervisors on a day named to show cause why the prayer of the petition should not be granted. The clerk files a certificate that the notice is given, which is conclusive. If so desired, the petition may also ask that no annual tax save one sufficient to pay the interest on the bonds, should be levied for a certain term of years not exceeding five, in

which case, if bonds are issued, none shall mature prior to the expiration of the period stated. With the petition is filed a plan for the application of the tax and the time of the bonds, to be approved by the supervisors. If a counter petition, signed by at least three-fourths of the owners, owning at least one-half of the land, be filed 10 days before the day for hearing, the board will not at that time order the bonds to issue. But the petition may at any time be amended and the bonds issue after like proceeding as before. If amendments are agreed upon by the petitioners for or against at the first hearing so that the amended petition shall then have enough signatures, the bonds shall issue. No bonds shall be issued until 30 days after the order of the board of supervisors.

The board of supervisors may anticipate the full amount of the tax levied by issuing bonds for a period of years, at not more than 6% interest. They may be sold at not less than par with accrued interest, at public or private sale. Each bond shall state the name and number of the district and that it, with the interest coupons attached, are liens upon all lands in the district, except those lands upon which the taxes have been prepaid, as provided below, giving the number of acres on which the lien lies; it also certifies to a full compliance with the law leading up to the issuance and sale of said bonds; and each bond is made conclusive evidence of every thing recited therein. The denomination shall be not less than \$100 nor more than \$1000 and they shall be numbered consecutively from 1 up and "each bond and coupon" signed by the president and the clerk of the board of supervisors. Coupons, each for the amount of one year's interest, shall be attached to each bond, one to mature each year until maturity. The aggregate amount of the bonds and coupons maturing in any year must not exceed the amount of the taxes that may be collected that year. Bonds are issued at the expense of the district and are recorded in the Drainage Record.

After 30 days from the order of issuance, the supervisors may issue bonds to the full amount of taxes not paid in to the treasury. If any installments of interest or the

principal of the bonds is not paid by six months after falling due, the holder may obtain a writ of mandamus to the district and the board of supervisors, directing them to levy and collect a special assessment, as herein provided, in such sums as may be necessary to pay principal, interest and costs of action, in addition to such other remedies as are authorized by law. Any bond owner may sue an official on his bond for failure to perform any duty imposed by this act.

At any time prior to the issuance of the bonds, but not after, any land owner may anticipate his taxes by paying the full amount thereof.

The supervisors must levy each year a special tax sufficient to pay the bond and interest maturing that year, not to exceed \$1.00 per acre for any one year which shall be collected by the sheriff.

Failure to prepay taxes as above is a consent to the issuance of the bonds, and waives any defense to the collection of the taxes by reason of any irregularity, illegality or defect in the proceeding prior to that time, (except where an appeal has been taken), this being in consideration of the right to pay in installments.

If the chancery court modifies the original assessment, the supervisors may further modify it to cover any deficit caused by the court's action or any other unforeseen circumstance, in the same ratio as the original assessment.

Lands, the taxes on which are not paid, may be sold in accordance with the laws applicable to state and county taxes. County and public highways are liable as in case of land owned by individuals, and assessments are payable out of the general fund of the county.

The commissioners and their successors have charge of the improvement in perpetuity and may do all acts necessary to preserve and maintain it and for its purpose may borrow money in a sum not exceeding what may be raised by a tax not exceeding 25 cents per acre, to be levied and collected as are other drainage taxes.

The commissioners render full annual accounts to the supervisors who audit them at a public hearing and order

such changes as are necessary; and, if necessary shall institute civil and criminal proceedings against the commissioners.

All drainage district taxes are collected by the sheriff as are other taxes and accounts thereof kept in a separate book.

If, after the petition for organization of a district is filed, another is organized and desires to drain through the channels of the first district, it shall pay a just compensation.

The supervisors fill any vacancies occurring among the commissioners.

A board of supervisors electing to organize and operate exclusively under this act may do so by an order duly passed and entered on the minutes.

ACT OF 1908.

(Hemingway's Code 1917, sec. 6880)

This statute exempts drainage lands from all taxation in Mississippi.

CHAPTER 28, LAW, 1917 (EXTRA SESSION)

This act provides a method of validating drainage district bonds, and other bonds, by a decree of the chancery court, upon the filing of an opinion of the bond attorney of the State and after notice by publication, and appeal to the supreme court when an appeal is taken.

CHAPTER 210, LAWS 1918

This statute declares valid all bonds, notes, certificates of indebtedness and other obligations of any drainage district, issued prior to January 1st, 1914, regardless of defects or, informalities in their issuance; and permits the re-funding of such securities.

ANALYSIS OF RECLAMATION LAWS OF MISSOURI.

Prepared by CHARLES and RUTHERFORD, Merchants-Laclede Building, St. Louis.

There are nine separate reclamation statutes in Missouri, only three of which have in recent years been resorted to, the others having become practically obsolete. Abridgments of these three follow. The first is what is known as the Circuit Court Drainage Act. The second is the County Court Drainage Act, and the third is the Circuit Court Levee Act.

CIRCUIT COURT DRAINAGE ACT.

Session Laws of Missouri, 1913, pp. 232—267.

Sec. 2. "The owners of a majority of the acreage in any contiguous body of swamp, wet or overflowed lands, or lands subject to overflow, situate in one or more counties in this state, may form a drainage district for the purpose of having such lands and other property reclaimed and protected from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience or welfare, or of public utility or benefit, by drainage or otherwise, and for that purpose they may make and sign articles of association, in which shall be stated: The name of the district, and the number of years the same is to continue; the boundary lines of the proposed drainage district; the names of the owners of lands or other property in said district, together with a description of the lands and other property owned by each; when the name of the owner of any said lands or other property is unknown, this fact shall be set out in said articles; said articles shall further state that the owners of real estate and other property within said district whose names are subscribed to said articles are willing to and do obligate themselves to pay the tax or taxes which may be assessed against their respective lands or other property to pay the expense of organizing and

of making and maintaining the improvements that may be necessary to effect the reclamation of said lands and other property, so formed into a drainage district, and to drain and to protect the same from the effects of water, and said articles of association shall contain a prayer, praying that the lands and other property described therein be declared a drainage district under the provisions of this act. After said articles of association and petition have been so signed, the same shall be filed in the office of the circuit clerk of the county in which such lands and other property are situate; or, if such lands and other property be composed of tracts or parcels situate in two or more different counties then in the office of the clerk of the circuit court of the county in which there are situate more of said lands and other property than in any other county."

Sec. 3. Upon the filing of the articles, the clerk is required to give notice thereof by publishing a notice once a week for four consecutive weeks in some newspaper published in each county having lands or other property in the district, the last publication to appear at least fifteen days before the first day of the succeeding regular term of court. The form of notice is prescribed by statute and is directed to all persons interested in the lands and other property described in the articles, and a description thereof must be set out in the notice. The persons interested are notified to appear at the return term and show cause why the property described should not be organized as a public corporation of the state.

Sec. 4. Owners of real estate who did not sign the articles may, on or before the first day of the return term, file objections, limiting such to a denial of the statements in the articles; and these objections are then heard without delay and in a summary manner. If the court finds the district should be organized, a decree will be entered accordingly declaring it a public corporation; otherwise dismissing the proceedings at the cost of the signers of the articles. The court may exclude lands or other property not coming within the provisions of section 2. No signer of the articles may have the proceedings dismissed as to him without the written

consent of his co-signers. A certified copy of the decree of incorporation must be filed in the office of the Secretary of State within sixty days of entry, and also in the office of the Recorder of Deeds in each county having lands in the district. A plat of the district must also be filed in each such recorder's office.

Sec. 5. After the district has been incorporated, the landowners meet at a time and public place designated by the circuit clerk by notice published once a week for two consecutive weeks in some newspaper published in each such county, the last insertion to be at least ten days before the meeting day. At this meeting five landowners are elected as a Board of Supervisors, two of whom must be residents of the counties having lands in the district. Each landowner is entitled to cast, in person or by proxy, on all matters, one vote for each acre of land he may own therein. The persons elected to the board determine by lot their terms of office, which are one, two, three, four and five years respectively.

Sec. 6. In each year, in the same month in which the first election was held, the landowners in the same manner as provided in Section 5 meet and elect one member of the board to serve for five years.

Sec. 7. The members of the board are required to take an oath, honestly, faithfully and impartially to discharge their duties and not neglect any of them.

Sec. 8. After election and qualification, the board organizes by electing one of its members president and one of them or some other suitable person secretary. It must adopt a seal and keep a record of its proceedings.

Sec. 9. The board appoints a competent civil engineer who may, the board approving, appoint assistants, and consult with others. The appointed engineer and assistants must survey the lands in the district, and those adjacent thereto, that may be benefited in whole or in part by any system of reclamation that may be designed and adopted, and file with the board annual reports accompanied by maps and profiles of the surveys, which reports shall contain a plan for reclaiming the lands in and adjacent to the district.

Sec. 10. Upon the filing of the final report, the board either adopts it or modifies it, with the approval of the chief engineer, and it thereby becomes the plan for reclamation.

Sec. 11. A tax of not exceeding fifty cents per acre may be levied upon all lands in or annexed to the district to pay the expenses of organizing the district, making the surveys, etc. and assessing the benefits and damages.

Sec. 12. Within twenty days after adoption of the plan for reclamation the secretary of the board files a certified copy thereof with the circuit clerk and in like time the board must file with such clerk a petition asking the court to appoint three commissioners, who are freeholders, residing in the state, not owners of land in the district nor of kin within the fourth degree of consanguinity to any landowner therein, to assess the benefits and damages. A majority of the commissioners control on all questions.

Sec. 13. The circuit clerk notifies them in writing of their appointment, and designates the time and place of their first meeting, at which time, or within ten days thereafter, they make and subscribe an oath to faithfully and impartially discharge their duties and make a true report. The secretary of the Board of Supervisors is ex officio secretary of this board, and is required to attend all meetings, and at the first meeting to furnish it a complete list of lands and other property in the district or adjacent thereto that will be affected by executing the plan for reclamation, with the names of the owners thereof as contained in the articles at the date of the decree, and also to furnish them a copy of the "plan of reclamation" with maps and profiles in his office.

Sec. 14. Within thirty days after qualifying, the commissioners are required to begin their duties. The attorney for the district, when called upon by them, advises them as to their duties; and they are accompanied by the chief engineer of the district or an assistant who renders in writing any opinion they may call for. They view the premises and determine the value of all land and other property, within or without the district, to be acquired for its use, as shown by the plan for reclamation, and assess the amount of benefits and

damages that will accrue to each governmental lot, forty-acre tract, or other subdivision of land, according to ownership, and to public roads, railroads, and other property, resulting from the execution of the plan for reclamation. In making assessments they are not permitted to consider what benefits will be derived by such property after improvements not provided for in the "plan" are constructed, but only such benefits as will accrue from executing the plan, or as it may afford an outlet for drainage or protection. Public roads, railroads, etc., are assessed according to increased physical efficiency and decreased cost of maintenance. The Commissioners cannot change the plan of reclamation. In their report, prepared by the secretary under the advice and direction of the attorney for the district, they show, in proper columns, in tabular form the owner of the property assessed, a correct description thereof, the number of acres assessed, amount of benefits assessed; number of acres taken for right of way; value of property taken and damages awarded. By and with the advice of the engineer they must "estimate the cost of work set out in the plan," including therein the cost of property required for rights of way and other uses, and the damages and probable expense of organization and administration, and tabulate the same, and file their report in the office of the clerk of the circuit court.

Sec. 15. After the report is filed the clerk gives notice thereof by publication made once a week for three consecutive weeks in some newspaper published in each county having lands in the district. The form of notice is prescribed, and is given "To all persons interested in the following described land and other property in — — County (Describing land) included within — — Drainage District," notifying them that the "commissioners, etc., filed their report in this office on the — day of — —, 19 —, where it may be examined and exceptions thereto filed."

Sec. 16. The district or any land owner may file exceptions to the report "within ten days after the last day of publication of the notice." The exceptions are heard by the court in a summary manner, and, after the determination of

all exceptions filed, if the court finds that the cost of reclamation is equal to or less than the total amount of benefits, it must approve and confirm the report. (If the court find to the contrary, it must decree the corporation dissolved and direct the levy of a uniform tax sufficient to pay all costs accrued and obligations incurred by the district. Sec. 37.) The court may modify or amend the report. The court apporitions costs accrued on account of exceptions filed, and condemns any land or other property within or without the district needed by it for its use as shown by the report of the commissioners. A certified copy of the decree of confirmation is furnished to the secretary of the Board of Supervisors, who, in turn, files a certified copy thereof in the office of the recorder of deeds in each county having lands in the district.

Appeals are allowed only on the two following questions: First, Whether just compensation has been allowed for property appropriated; and, second, whether proper damages have been allowed for property prejudicially affected by the improvements.

Sec. 17. The Board of Supervisors has authority to construct the necessary improvements or to let same by contract. They may let the work to be executed in whole or in part, on plans and specifications to be prepared by the engineer and attached to and made a part of the contract. Contracts must be let to the lowest and best bidder after advertisement. The successful bidder must execute a bond with approved security conditioned that he will well and properly carry out the contract, which contract is prepared by the attorney for the district and executed by the president of the board and the contractor. The engineer must report once a year to the board on all work done and improvements made, with such suggestions and recommendations as he may deem proper.

Sec. 18. The board then, without unnecessary delay, levies a tax upon all benefited property in the district sufficient to pay the cost of executing "the plan for reclamation" and "carrying out the objects of the district," plus ten percent. for emergencies. This tax must be levied on each tract.

of land in proportion to benefits assessed, but not in excess thereof; and in case bonds are issued the amount of interest that will accrue thereon shall be included and added to the tax, but interest must not be included in determining whether the cost of construction will exceed the benefits. The tax levied is certified in book form, by the President and Secretary of the Board and attested by the seal of the district, and is thereafter a permanent record in the office of the secretary.

Sec. 19. The Board each year thereafter levies such part of the tax provided for in Section 18 as may be needed to be collected for such year, and these levies are collected by the county collector at the time and in the manner of collecting other taxes. The annual levy is certified to the county collector by the board not later than September 1st of each year. (The form of the certificate is prescribed by this section and is quite simple and easily followed.) The tax book for the annual levy is provided with columns showing the names of property owners, as they appeared in the decree of organization, description of property, amounts of annual levy or installment of tax on each property or tract of land, amount of maintenance tax levied, amount paid, date of payment, and names of persons paying. This tax book must be endorsed "Drainage tax book—Drainage District,—County, Missouri, for the year 19—;" and this endorsement must be printed at the top of each page.

Sections 20 to 23 contain full and ample provisions for the collection of these taxes by the County Collector, require him to file bond to the board, subject him to a ten per cent. penalty for failure to pay over the taxes, and impose upon each tract of land in the district a lien (which attaches from the filing, in the office of the Recorder of Deeds, of the certificate of the President and Secretary of the board) for the total tax levied against each tract, together with delinquency penalties and costs, including a reasonable attorney's fee. This lien is second to liens for State and County taxes only.

The certificate above referred to shows the ownership, description, and amount of tax levied against each tract of land and other property in the district; is made up in the form of a well bound book and becomes a permanent record in such office.

Sec. 24. The tax book as furnished the collector is prima facie evidence in all courts of all matters therein contained. The lien created is enforced by an action on delinquent tax bills certified by the county collector, and action for collection should be instituted within six months after December 31st of the year of levy. Suit must be brought in the corporate name of the district by its attorney in the county where the land is situate, unless part is in some other county, then in either county. The procedure as to sales of property is the same as in actions for state and county taxes. Title acquired at foreclosure sales is liable to payment of future annual levies.

Sec. 25. The Treasurer of the Board is required to give a proper bond to secure the district against loss, and must have his books and accounts audited annually. He is made the custodian of, and pays out, on warrants lawfully issued, the funds of the district.

Sec. 26. The Board of Supervisors has the power to execute the "plan for reclamation" and keeps in repair and maintains all improvements made, and exercises jurisdiction outside of the district when necessary. It may hold and control any water power created by constructing necessary improvements and may construct and maintain hydro-electric power plants for developing such power for the use of the district, and use the funds of the district, not otherwise appropriated, therefor. It may condemn for the use of the district lands or other property, within or without the district, not acquired or condemned by the court on report of the commissioners in the first instance, proceeding as in the condemnation of property for railroad, telephone and telegraph rights of way.

Sections 27 to 34, inclusive, contain certain administrative provisions relative to employment of attorneys, keeping

the records, condemnation of property needed for the district, construction of bridges and embankments, interest on warrants, bonds of officers, clerks, etc., and changes of venue.

Sec. 35. Actions under this act do not abate by reason of the death of any landowners, but upon suggestion of death the cause is immediately revived in the name of the heirs, devisees, or legal representatives, and summons in vacation or term time served at least five days before a day set for hearing, but if non-residents, then by publication in the manner and for the time provided in Section 3.

Sec. 36. No appeal acts as a supersedeas nor delays any action or work begun under this act.

Sec. 37. See Section 16, *supra*.

Sec. 38 relates to compensation of officers, employes and fees of court and county officials.

Sec. 39. The word "owner" means the owner of the freehold estate and not reversioners, remaindermen, trustees or mortgagees, who may be ignored in all respects, but are represented and bound by present owners of the freehold estate.

Sec. 40. The Board of Supervisors, or the owners of land adjacent to the district, may petition the organizing court to amend the incorporating decree by correcting or striking out names of landowners, by adding, striking out or correcting property descriptions in the district; or to amend the decree in any manner; or to amend or change the plan of reclamation; or to correct errors, omissions or other mistakes therein; or may petition that the boundary lines be extended so as to include lands not described by and included in the articles and incorporating decree, and if the boundary lines are sought to be extended, the petition must ask for the appointment of commissioners as in Section 12. Notice of filing the petition must be given by the clerk in the manner and for the time provided by Section 3. The form of the notice is set out in this section. Any person affected by the petition may file objections on or before the first day of the return term, and the court hears the same in a summary manner and enters its decree according to its findings.

Certified copies are then prepared and filed as provided in Section 4. If boundary lines are extended, the commissioners must be appointed as in Section 12, and proceed as in Sections 13 and 14.

Sec. 41. Provides for preserving and keeping in repair the improvements made in the district.

Sec. 42. The Board of Supervisors may issue the bonds of the district to an amount not exceeding 90 per cent of the total taxes levied under Section 18, in denominations of not less than \$100, with interest not exceeding 6% per annum, payable semi-annually, maturing serially within twenty years, beginning not later than five years after date, and payable at some convenient place to be named in the bonds. They must be signed by the President of the Board, and attested by the signature of the Secretary and seal of the district, and when executed, are delivered to the Treasurer of the district, who sells them in such amounts and at such times as the board may direct, at not less than 95 cents on the dollar and accrued interest. The bonds must express on their face the purpose of their issuance, and, if not paid at maturity, with unpaid interest coupons, bear interest at the rate of six per cent per annum until paid. Appropriations are made by the board from time to time for the payment of interest and principal, and sufficient moneys are required to be lodged at the place of payment to pay interest, principal and expenses. In the event the tax levy made under Section 18 proves insufficient to pay the bonds and coupons, then the board must make a sufficient additional levy. The treasurer of the district receipts for bonds delivered to him and secures the district against loss thereof, or proceeds thereof, by a bond with approved security. He returns cancelled unsold bonds when requested by the board. He must promptly report all sales of bonds, and the board provides for paying maturing bonds by the issuance of warrants, which specify the bonds and accruing interest it is to pay.

Sec. 43. After the completion of the work the board, on or before September 1st in each year, levies against all the benefited property in the district, a "maintenance tax" to

pay current expenses and keep and maintain in repair the improvement in the district, and certifies the same to the collector in the same book with the annual installment levy, in a separate column under the heading "maintenance tax." This tax is limited to ten per cent. of the net benefits and is collected as annual installments are collected.

Sec. 44. Owners of twenty-five per cent. or more of the acreage in the district may petition the organizing court, when a material change of property values in the district has occurred since the last assessment, for a re-adjustment of the assessment of benefits for the purpose of securing a more equitable basis for the levy of the maintenance tax, whereupon the clerk gives a notice in the manner and for the time provided by Section 3. The form of this notice is prescribed. If, upon a hearing, the court finds the allegations of the petition to be true, it orders a re-adjustment made and appoints commissioners as in Section 12, who proceed as in Section 14, and subsequent procedure is had as on an original assessment. The commissioners, in making re-adjustments, are not limited to any previous assessment, and after re-adjustment, the 10% limitation for maintenance applies to the re-adjusted assessment of benefits.

Sec. 45. Two or more adjacent districts may unite and thereafter have the same power and authority as if originally organized as one. The boards of the respective districts call an election as in elections for members of the board, stating therein the time, place and purpose thereof, and if a majority of the acreage voting in each district favors consolidation, the board of each district petitions the circuit court of the county wherein the greatest amount of land lies, accompanied by complete returns of the elections, and stating the names of the original districts, when incorporated, names of the land-owners and boundaries of each. The clerk gives notice in the manner provided by Section 3, stating the contents of the petition, the object sought and the return term. Any landowner may, on or before the first day of the term, file objections; but if these be overruled, or if none have been filed, the court makes an order that any two or more asking to be united shall be united

under some designated name, and the lands therein made subject to the privileges, burdens and liens as previously existing; and subsequent proceedings are had as on original organization.

Sec. 46. The corporate life of the district may be extended by the board calling an election as in Section 5, the notice stating the time, place and purpose of the meeting, and that if a majority of acres represented assent to such extension, the organizing court will be petitioned to grant the extension. The meeting is conducted as in Section 5, except that some member of the board acts as chairman and the secretary of the board or his assistant acts as clerk. If the proposition carries, the board, within forty-five days before the next term of court, files a petition praying for extension of corporate life, and thereafter such proceedings are had as relate to articles of association.

Sec. 47. When the executed plan of reclamation proves insufficient, new or amended plans may be designed, providing for enlargement of existing works or new works, and additional assessments are made as in Section 14, in proportion to increased benefits accruing. If the total tax levy made under Section 18 proves inadequate to pay for the original cost or for necessary new work, an additional levy may be made, not exceeding the total benefits.

Sec. 48. The board may remove at pleasure any officer, attorney or employe.

Sec. 49. Existing reclamation works may be connected with those provided for in the plan, and made a part thereof; but after the completion of the plan no other works may be connected with it without the consent of the board given in writing and prescribing the method, terms and conditions, nor without the approval of the district engineer. Land-owners desiring to make connections may petition the organizing court, who hears the same in a summary manner, and whose decision thereon is final.

Sec. 50. In counties having township organization, the annual installments of drainage taxes are certified to the township collectors, as is provided for certifying to the

county collectors, and the delinquent lists are certified to the county treasurer (who is ex-officio collector) to be by him collected. The township drainage tax books have the same probative force, and the procedure for collection of taxes, is the same as in Section 24.

Sec. 51. The taxes levied under Section 18, less any amount added for interest, may be paid on or before a date to be fixed by the board, and the assessment is then deemed satisfied, and is marked "paid in full" in the certificate filed in the recorder's office under Section 25.

Sec. 52. Districts heretofore organized, in process of organization, or hereafter organized under any previous or existing laws, general or special, may elect to come under the provision of this act, but districts organized or in process of organization under Art. 1, Chap. 41, R. S. Mo., 1909, are not required to reorganize under this act, but have the right to proceed under this act.

Sec. 53. The procedure for reorganization is the same as in the organization of a new district, but the original name and boundary lines must be retained.

Sec. 54. Notice in the manner and for the time shall be given as in Section 3. The form of the notice is set out in this section.

Sec. 55. Omitted because included in Sec. 53.

Sec. 56. All property of the district, books, papers, etc. must be delivered to the board of supervisors for the reorganized district.

Sec. 57. The reorganized district assumes all of the valid obligations of the old district.

COUNTY COURT RECLAMATION ACT.

The following is an abridgment of the Missouri County Court Act.

Construction and Improvement of Ditches, Watercourses, and Levees upon Petition of one or more Landowners. Article 4, Chapter 41, Revised Statutes Missouri, 1909, amended by Laws 1913, p. 271, Laws 1915, p. 270, and Laws 1917, p. 269.

Sec. 5578. Whenever it will be conducive to public health, convenience or welfare, or of public utility or benefit to cause ditches or drains to be constructed, the county court, at any regular session, has authority to cause the same to be done. The word "ditch" as used in this statute includes any method of reclamation.

Sec. 5579. Before action may be taken by the court, a petition must be signed by one or more landowners whose lands will be liable to assessment, if the improvement is less than five miles in length, and by five or more if it is longer than five miles, which petition shall set forth (a) the necessity therefor, (b) a general description of the proposed improvement, (c) the starting point, (d) the route, (e) the terminus, and (f) "whether it is desired to issue bonds." The petition must also be accompanied by a bond for \$50.00 with approved security, conditioned for the payment of costs and expenses.

Sec. 5580. At any session thereafter the court appoints three resident freeholders, not interested nor of kin to any one interested, and a civil engineer, to view the line of improvement and adjacent premises and report under oath whether the proposed improvement is (a) necessary, (b) practicable, (c) of public utility, or (d) conducive to public health, convenience or welfare; and, so finding, to report, in writing accompanied with necessary maps, profiles and drawings, (1) approximately the proper character, (2) the dimensions, (3) the location, and (4) the probable cost of the necessary improvements.

Sec. 5581. Time for hearing on the report and petition is fixed by the court, or clerk if in vacation, and notice given by publication in some weekly newspaper of general circulation published in the county of (a) the pendency of the petition (b) appointment and report of viewers, (c) the beginning, route, and terminus of the improvements, (d) the time of hearing; the last publication to be not less than ten days before the date set for the hearing.

Sec. 5582. If the court finds against the proposed improvements, the petition is dismissed at the costs of the petitioners.

Sec. 5583. Any interested person may, on or before the date of hearing, remonstrate in writing against the petition or the report or both, setting forth his grievances. If the court finds in favor of making the improvements the benefited lands will constitute a drainage district, which is designated by number, and becomes a body corporate possessing the usual powers of such a corporation, including the right to sue and be sued, and to hold title to property acquired in any lawful manner.

Sec. 5583a. The court levies a uniform tax of 50 cents per acre upon the lands in the district to pay expenses incurred before bonds may be issued and sold. This tax is a lien and becomes delinquent on December 31st in the year of the levy, and is collected in the same manner as the annual installment tax is collected. If the viewers' report shows land not benefited which had paid this tax, it must be refunded.

Sec. 5583b. Engineers employed, individual or otherwise, must give bond of not less than \$2000, with proper security, conditioned for faithful performance of duties.

Sec. 5584. The court, by order, directs the same viewers or others qualified (taking oath as required by Section 5580) to establish the precise location, form and dimensions of the proposed improvements, make a schedule of all lands in forty-acre tracts or less, the roads, railroads and other property that will be benefited or damaged, showing the names of owners in so far as they may be ascertained by diligent effort; estimate benefits to each tract, etc., and the total cost of the improvements and incidental expenses. The engineer must survey each improvement and prepare profiles thereof, showing surface and grade lines; estimate the number of cubic yards of earth and other substance to be removed in each 100 feet; prepare a map of lands, roads and railroads affected, location of improvements, and boundary lines of each tract. The engineer, with approval of the court, may employ assistants. They must report with schedule, maps, etc., and file an itemized expense account.

Sec. 5585. Provides the details for locating improvements and extending same below point named in the petition when necessary to secure a proper outlet, locating same on division lines when it can be done without sacrifice of general utility. Interested persons may appear before the viewers and express their opinions.

Sec. 5586. The viewers' report must show names of owners, descriptions and values of property required for rights of way, estimate of damages to each piece, and benefits to the remainder. Damages must be paid in cash.

Sec. 5587. Immediately on filing the report, the clerk must set it for hearing for some day of the next regular term of the court, and thereupon issue, in the name of the state, a notice directed by name to every person returned by the viewers as the owner of any piece of affected property, and by name to all others who in any manner may be ascertained to own or be interested therein, and generally to all persons, without mentioning names, who may own or be interested therein, notifying them of the general object and nature of the petition and the report, and of the day fixed for the hearing, when and where they may appear and show cause why the report should not be confirmed as made, or should be amended. The notice should contain, in columns, abbreviated tabulated descriptions of the property affected, and be published in four issues of some weekly newspaper published in the county, the last insertion to be before the day of the hearing.

Sec. 5588. It must first be determined whether the proper notice has been given, and if not, another date must be set and another notice given as provided in Section 5587; and when the court finds that due notice has been given, it must examine the report, and correct and amend it when it is unjust or unfair, and condemn the property needed, following the procedure in railroad condemnation proceedings as nearly as may be, and then confirm the report. By direction of the court, the clerk apportions the cost of construction plus 10% for emergencies, against each piece of property in proportion to the benefits assessed.

An insufficient apportionment may be supplemented by an additional one on order of the court, proportioned on the original assessment. The court may condemn property for the use of the district, independently of the viewers' report.

Sec. 5588a. The court may, on hearing, change the location and character of the proposed improvements, and provide for additional improvements; and when interested parties fail or are unable to convey rights of way, the report shall be referred back to the viewers with instructions to modify and amend it in conformity with the order of court; and upon the filing thereof a new notice must be given in the manner and for the time required in Section 5587. The form of the notice is prescribed by this section.

Sec. 5589. Assessments of benefits must be made upon the basis of the particular improvements provided for in the viewers' report and none other. Lands lying below cannot be assessed for benefits to lands lying above. Location expenses include court costs, viewers' expenses and fees for publications. The court may employ an attorney to assist it in the work provided for in this act.

Sec. 5590. Makes provision for disposition of excavated earth when along a public road or section line.

Sec. 5591. Apportionments of costs on account of benefit to public roads are made to the county; and as to railroad property they are made to the corporate owner.

Sec. 5592. Interested parties may file exceptions to the apportionments of benefits and damages reported, on or before the date set for the hearing; and failure to file within that time is deemed a waiver. (Sec. 5594). An appeal is allowed to the circuit court to each excepting landowner separately on the following questions: First, whether compensation has been allowed for property appropriated; and, second, whether proper damages have been allowed for property prejudicially affected by the improvements.

Appeals do not stay court proceedings or the progress of the work, and only affect the rights and interests of the party appealing.

Sec. 5593. The clerk of the circuit court certifies back to the county court the result of the appeal.

Sec. 5594. Provides for payment for condemned property described in the report and adjudges it a right of way for the improvements.

Sec. 5595. The time and place for the letting of the contract for making the improvements must be fixed by the county court, and notice thereof, containing a description of the work to be let, must be given by the clerk by publication in three consecutive issues of some weekly newspaper of general circulation published in the county, the last insertion to be at least ten days before the day of letting. The engineer for the district must attend the sale, offer and receive bids, and make a contract for the county with the lowest responsible bidder and take bond for faithful performance.

Sec. 5596. Contracts must be let at public outcry, in sections if allotted; if not, then as directed by the court. No bid is entertained which exceeds the estimated cost of location and construction. Successful bidders must forthwith execute and deliver to the engineer a bond in at least twenty per cent of the amount of the bid, with sureties, conditioned for faithful performance in manner and time specified in the contract. The engineer is required, within fifteen days after "the day of sale" to file report thereof and the bonds and contracts with the clerk. The court then approves or rejects the same and records its action. If approved, the contracts and bonds must be recorded. Time for completing contracts may be extended without affecting the rights of sureties on the bond.

Sec. 5597. Provides for reletting contract on failure of performance in time and manner therein required, and making contractor liable on his bond for damages sustained.

Sec. 5598. Contains provisions relative to warrants on ditching districts.

Sec. 5599. The assessments confirmed, with interest not exceeding 6% per annum, with costs, commissions and reasonable attorneys' fees, from the date of confirmation,

constitute a lien until paid, second only to the lien for state, county, school and road taxes, and are collected in the same manner as state and county taxes. Assessments become delinquent on December 31st of each year, and, until paid, bear interest at the rate of one per cent. per month. The collector is required to sue on delinquent taxes within six months; and titles acquired on foreclosure sales are subject to the lien of subsequent assessments.

Sec. 5600. Liens are established and enforced and foreclosure sales made as in enforcement of liens for state and county taxes.

Sec. 5601. After contracts have been let, the court determines in what number of installments the assessments shall be paid, and the rate of interest the assessments shall bear.

Sec. 5602. The assessments as confirmed by the court are entered by the clerk upon a "ditch tax book" in proper columns, and annually thereafter the amount of the annual installment to be paid and the interest on unpaid installments are therein entered.

Sec. 5603. If prayed for in the petition, the court may issue bonds to the amount of 90% of the assessments confirmed, in denominations of not less than \$100, maturing at annual intervals within twenty years, beginning after a period of two years from the date of issue, bearing not to exceed 6% interest, payable semi-annually; both principal and interest being payable at the office of the County Treasurer. They must be sold by the county treasurer at the time and place fixed by the court and after notice given by publication in some weekly newspaper published in the county or in some financial periodical. They must show upon their face for what purpose they are issued; and must bring not less than 95% of their face value.

Sec. 5604. The engineer is required, from time to time, to inspect the work as it progresses; and, if properly done, to accept it and give the contractor a certificate to that effect, and on presentation of such certificate to the county clerk, that official audits the claim and the court draws a warrant for the amount due.

Sec. 5605. The county collector and treasurer are required to give bonds in double the amount of drainage funds that may at any time be in their possession.

Sec. 5606 contains provisions no longer applicable.

Sec. 5607. Provides for loaning the sinking fund.

Sec. 5608. When improvements are required in more than one county petitions must be presented to the county court of each county. Each court appoints one viewer, and all the viewers so appointed meet within ten days at the court house in the county where the proposed improvement is to begin, and engage the services of a competent engineer, who may, with the consent of the court employ assistants to make surveys, etc. when they shall proceed and report to each court as in cases where the proposed improvements are all in one county, except that they shall apportion the cost to each county in proportion to the improvement in each county.

Sec. 5609. Each court acts on the report separately and if they concur in finding against the report, they dismiss the petition, or, if they find therefor, each appoints two additional viewers, who, with the first viewer and a competent engineer selected by all the viewers, proceed as in the case of proceedings in one county only.

Sec. 5610. If the courts disagree on the report of the viewers, but do not find against the improvement, each appoints two commissioners possessing the qualifications of viewers, who are furnished with a transcript of the court's objections; and, within twenty days, they must meet in the office of the clerk of the county court of the county wherein is the source of the proposed improvement, and examine the court's objections and the proposed improvement, and the district, and make such changes as to them may seem just, and report in writing, in twenty days, to each court, their action and finding.

Note: No further action is provided for by this act.

Sec. 5611. Provides for building bridges.

Sec. 5611a. Provides for appointment of a competent ditch overseer after the work is completed, and defines his duties.

Sec. 5611b. By this section there may be annually levied a maintenance tax against each piece of property in the district, not exceeding 10% of the original cost of construction, for maintenance and repair of the improvements made.

Sec. 5612. Provides for keeping ditches open, etc.

Sec. 5613. When ditches need to be cleaned out, obstructions removed or new work done, twenty per cent. of the owners of land originally assessed may file a "statement setting forth such necessity," notice whereof (form given in this section) shall be given by the clerk by publication in four issues of some weekly newspaper published in the county, the last insertion to be before the first day of the next regular term following the filing of the "statement."

Sec. 5614. On hearing, the court will, unless good cause be shown to the contrary, order the county surveyor or some other competent person to have the work done and report the cost thereof to the court. If the court finds that the owners of a majority in acreage have signed the "petition" or have joined therein by motion, the court finds in favor of the improvement. On filing the report of cost, the court divides the cost pro rata according to the original assessment of benefits, and places the same upon the tax books to be collected as other taxes. The court may direct this tax to be paid in annual installments, or it may issue bonds to pay for the work as herein provided. If new work to be done requires assessment of damages, the court must appoint viewers to determine the same, and proceedings thereon are the same as in the first instance. The work to be done must be let by contract, and paid for as in original construction.

Sec. 5622. Landowners may pay assessments "in full" at any time before bonds are issued.

MISSOURI CIRCUIT COURT LEVEE LAW.

Reclamation by construction of levees is provided for by Art. IX. Chap. 41, R. S. Mo., 1909, as amended by Laws of Missouri, 1913, p. 290.

The authority, procedure and other matters under this statute are the same as in the "Circuit Court Drainage Act" (Art I. Chap. 41, R. S. Mo., 1909, as amended by laws of Missouri, 1913, p. 232), except that (a) bonds may be issued not exceeding ninety-one percentum of the total amount of the taxes levied under Section 18; and (b) land-owners are not accorded the privilege of paying their taxes in full before the bonds are issued.

NEW MEXICO DRAINAGE LAW.

Digest Prepared by REID & HARVEY, Roswell, N. M.

The New Mexico drainage law was passed in 1912 and is found at Sections 1877 and 1958 of the Code of 1915. The constitutionality of the law has been upheld by the Supreme Court of the state in the case of Jacques Michelet, remonstrant, v. The Dexter-Greenfield Drainage District, reported in 154 Pacific, 382.

The law provides that a drainage district may be organized by the filing of a petition signed by a majority of the adult owners of lands within any district representing one-third in area of the lands therein to be reclaimed and benefited and that they may acquire by purchase or otherwise drains theretofore constructed or outlets for drains and that such drainage must be for the promotion of agricultural interests and the drainage of land; and requires the petition to state the name of the proposed district, the necessity of the drainage work, a general description of the starting points, routes and termini of the drains or ditches, a general description of the lands proposed to be included in the district, the names of the owners of lands therein, and give a general description of such drainage work as has already been constructed which they desire to enlarge or repair, and the petition shall pray for the organization of the drainage district by the name and with the boundaries proposed and for the appointment of commissioners for the execution of the proposed work; and that such petition may be amended in proper cases by order of the court; and that several petitions may be circulated, signed and filed and together shall constitute one petition and that non-contiguous lands may be included within the district; provided that agricultural interests will be promoted by the drainage of each part thereof and that the benefits of the proposed work in each part will exceed the damages from and cost of said proposed work and that the court is satisfied that the work

can be done more cheaply if done in a single district than otherwise.

Upon the filing of the petition, the court enters an order providing for twenty days' notice to be given of the time and place when the same will come on for hearing, which notice must be given by posting the same in at least five places in the district and by causing to be served a copy of the notice upon each owner of land within the district and by publishing a copy at least once a week for three weeks in a newspaper published in the county. The notice must state in what court the petition is filed, state briefly the starting points, routes and termini of the drains or ditches, give a general description of the proposed work, describe the boundaries, give the name of the district and state the time and place fixed by the court for the hearing.

The petition must be accompanied by an affidavit giving the names and post-office addresses of the non-resident owners, if known; and if not known, shall state that their addresses cannot be ascertained after diligent inquiry. The clerk of the court shall mail a copy of the notice to each of the non-residents whose post-office address is known. The service is proven by filing in the proceeding the certificate of the clerk as to the mailing and the affidavit of the party who knows the facts as to the posting, serving and publication thereof. If personal service is obtained upon all the owners of land within the district, it is not necessary to post or publish the notice as above provided; and the court does not lose jurisdiction on account of failure to serve one or more owners of land; but when such fact is discovered, the court shall adjourn the hearing and make an order directing service upon them for a later date; and if it shall appear that the clerk has omitted to mail notices to the non-resident owners, the court may adjourn the hearing and require the same to be done fourteen days prior to the adjourned hearing and the same procedure is taken in case of failure to publish or post notices.

On the day fixed for the hearing all parties interested may appear and contest the sufficiency of the petition,

the sufficiency of the signers to the petition, the sufficiency of the notice, the constitutionality of the law and the jurisdiction of the court, and all remonstrances must be in writing and clearly specify the grounds of contest.

The court shall hear and determine whether or not the petition contains the signatures of a majority of the adult owners of lands within the said proposed district and otherwise meets the requirements of law as herein stated, and may adjourn the hearing from time to time for any legitimate purpose. The affidavit of any three or more signers of the petition as to the ownership of land within the district is taken as *prima facie* evidence thereof; and the prayer of the petition cannot be defeated by fraudulent transfers of lands by or from one owner to another, and all purchasers of land after notice of such petition or after the petition shall have been filed shall be deemed to have purchased with notice thereof.

If the petition does not contain sufficient signatures, it shall be dismissed and judgment entered against the petitioners for the costs; but if it shall appear that the petition has been properly signed, the court shall so find and shall appoint three residents as commissioners, who are required to file an oath and bond to be fixed by the court, and who serve for a term of two years. The act contemplates that the commissioners, whether to fill vacancies or to supply regular incumbents, shall be appointed by the court. They shall keep proper records of moneys collected and accurate minutes of all of their proceedings and shall annually, in September of each year, make a financial report to the court and they shall receive such compensation as the court shall determine and their actual expenses. They are declared to be public officers but are under control of the court at all times.

The commissioners shall organize within ten days after their appointment and elect a president and secretary and shall report to the court whether or not the proposed work is necessary and would be of utility in carrying out the purposes of the petition; whether it would promote agri-

cultural interests and whether the lands would be benefited by such improvement; whether the total benefits will exceed the cost together with the damage; and they shall in their report fix as near as may be the boundaries of the proposed district and these boundaries shall not be changed from those in the petition described so as to deprive the court of jurisdiction by reason of not having sufficient signers thereon. If the work is not best suited to carry out the purposes of the petition, the commissioners shall report some other plan best suited to carry out such work.

When the commissioners file their preliminary report, the court shall fix a day for hearing thereon and notice shall be given by publishing a brief notice thereof in one or more newspapers once a week for three weeks, describing all new lands included in said district by the commissioners.

Any person may, on or before the day of hearing, file a remonstrance against the report and the court shall hear and determine the same.

If new lands are taken in, the owners shall be served with notice as provided for service of the original petition. All issues are tried before the court without a jury. If the court finds in favor of the remonstrants that the proposed work will not promote agricultural interests or that the cost will exceed the benefits, the petition shall be dismissed and the cost taxed against the petitioners; but if the court finds that the benefits will exceed the cost and that the construction of the said system will promote agricultural interests, the court shall, in writing, make an order confirming said report, after such amendments as have been ordered are made, and shall order the work done; and such findings and order shall be final and conclusive unless appealed from to the Supreme Court within thirty days; and thereafter upon the entry of such order of confirmation, such drainage district shall be and is thereby declared to be organized as a drainage district by the name mentioned in said petition, or such other name as the court shall fix, with the boundaries fixed by the order confirming the report of the said commissioners, and is declared to be a body

corporate by the name fixed in said order, with the right to sue and be sued, etc.; and the commissioners shall constitute the corporate authority of said drainage district and exercise the functions conferred on them by law, and perform all acts necessary to the construction and preservation of the proposed work. All proceedings required prior to the entry of such order of confirmation shall be deemed to be necessary to the formation of said body corporate.

After the confirmation of the commissioners' preliminary report, they shall employ a competent drainage engineer and proceed to have all necessary levels taken and surveys made and lay out the proposed work and make a map thereof and plans, profiles and other specifications and report to the court:

1. Whether the starting points, routes and termini of the proposed work as contained in the petition are proper and feasible; and if not, shall report such as are proper and feasible.

2. If it is necessary to change the boundaries they shall report the change and give the names and post-office addresses of owners affected thereby; but they cannot deprive the court of jurisdiction by any such change; and owners of lands adjacent to the district may petition to have their lands brought therein.

3. What lands will be injured by the proposed work, and shall award damages to each tract, lot or easement therefor.

4. What lands will be benefited and shall assess against each lot, tract and easement the amount of benefits to be known as assessment of benefits.

5. They shall report the total amount as near as they can determine that the proposed work will cost, including incidental expenses, cost of organizing the district, damage to lands and cost of construction.

6. If the cost of any particular part of the work to be done is to be assessed upon any particular tract, lot or lots, or upon any particular corporation or individual, they shall so report and fix and determine the amount assessable in such case.

7. If any person or corporation will receive special benefits, they shall so report and assess the benefits against each particular person or corporation, which is held to include railroad companies, other private corporations of all kinds, towns, cities, villages and other drainage districts.

8. They shall apportion and assess the part of the cost of construction not assessed against any particular person or tract, against the several benefited tracts, lots or easements in proportion to the benefits which they have assessed against the same by setting down opposite each tract the sum so apportioned to each, and the sum of these assessments make up the assessments for construction.

9. They shall report the cost of keeping the work in repair; and

10. Shall file with their report such maps, plans and specifications as they have prepared.

The commissioners are not confined to the points of commencement, routes or termini as set forth in the petition but shall locate, design and lay out such plan as shall seem best to promote agricultural interests and such plan may be altered by the court, upon the remonstrance of any person, as to the court shall seem just. If they find that the proposed district will not embrace all the lands benefited by the proposed work, or that it will include lands not benefited, they shall make such changes in the boundaries as are necessary so as to include or exclude such lands as they shall deem proper.

Upon the filing of this report the court shall make an order fixing a time and place when and where all persons interested may appear and remonstrate against the same, and the clerk shall cause notice of such hearing to be given to all parties interested; which notice shall contain a brief description of the lands benefited, and damaged, together with the net damage awarded to the several tracts of land. This notice shall be published three consecutive weeks in a newspaper and a copy thereof shall be personally served upon each owner residing within the district at least twenty days prior to the hearing; and the court, in case it

finds that the report should be modified, may order the commissioners to modify the same.

At the time of hearing, if there be no remonstrances or if the same have been overruled, or if the petition has been made to conform to such orders or modification as the court shall enter, the court shall confirm the report, which order of confirmation shall be final and conclusive and the work shall be established and authorized and the proposed assessments approved and confirmed and the order of the court shall be final unless appealed from within thirty days. This order, however, may at the same time or any subsequent term be revised, modified or changed in whole or in part upon the petition of the commissioners, after such notice as the court shall require; and the commissioners may, at any time prior to the final order, present and file a supplemental report, or amend their report, in such manner as they desire. In case the petition is finally dismissed by the court, judgment shall be entered against the petitioners for costs and expenses and all petitioners shall, among themselves, contribute in the payment of said judgment, in proportion to the number of acres of land owned by them in the district.

The court may order the assessments for cost of construction to be paid in not more than fifteen annual installments, as may be convenient, for the payment of the principal and interest of any notes or bonds that may be issued to meet the cost of construction; and the court shall fix a date on which the first installment of the assessments for cost of construction shall become due, which shall not be more than five years after the date of the order and such installment shall draw interest at the rate of not to exceed eight per cent. Unless otherwise ordered, the assessments shall be payable at once, and from the time of the entry of the order, assessments for cost of construction and interest thereon shall be a lien upon the lands assessed until paid. Any owner of land may relieve his land from assessments by paying the amount assessed within thirty days from the entry of the order. If the assessments against the lands are not paid when due, the same shall be

certified to the tax collector and shall be entered upon the tax rolls against the lands benefited and shall be collected in the same manner as state and county taxes.

The commissioners have the right to enter upon any lands for the purpose of constructing the said drainage system and it is a misdemeanor to interfere with them; and where a district has no sufficient outlet, it may condemn lands over which it is necessary to pass to reach an outlet. Provision is made for crossing railroad tracks by ordering the railroad company to construct a drain thereunder; and upon failure to do so within thirty days, the commissioners construct the same themselves.

If it is subsequently found that the commissioners have not reported in their first report upon assessments for benefits a sum sufficient to complete the work, or if in any year an additional sum is necessary to pay the interest on lawful indebtedness, further or additional assessments upon the lands benefited, apportioned upon the last assessment of benefits, shall be made by the commissioners of said drainage district under the order of the court without notice.

Omission to assess benefits, or to assess for cost of construction, or to make additional assessments, or to make assessments for repairs against, or to award damages to any one or more tracts of land or easements in a drainage district are not jurisdictional; and if any owner claims that his land is exempt from liability for such assessments, he may within thirty days after the assessments have been made, and on ten days' notice to the commissioners, appear and show cause why said lands should not be bound by such assessments; and if the court determines that such assessment is void, the commissioners may levy an additional assessment upon all assessable lands to make up the deficiency.

The commissioners may borrow such an amount as is necessary to meet the preliminary expenses of organization, and secure the same by notes bearing interest at a rate not to exceed eight per cent and running not more than one year; and may borrow money to meet the cost of construc-

tion, or for the payment of any legitimate indebtedness they may have incurred and secure the same by notes or bonds bearing interest at not to exceed eight per cent and not running beyond one year after the last installment of the last assessment shall fall due, which said notes or bonds shall not be sold at less than ninety per cent of their face value, and shall be transferable by delivery to the same extent as negotiable paper; and said notes or bonds shall not be held to make the commissioners personally liable, but shall constitute a lien upon the assessments for the repayment of the principal and interest of such notes or bonds. No commission other than the discount herein provided shall be allowed for the sale of such bonds; and such bonds shall not be subject to taxation by the state or any subdivision thereof; all sales to be approved by the court. The commissioners may also issue bonds for refunding purposes.

In all cases where the estimated cost of the work shall exceed Five Hundred (\$500.00) Dollars, the same shall be let to the lowest responsible bidder, and the commissioners shall advertise for bids and they shall not be interested in any contract for the construction of any drain, ditch or other work in the district.

Damages allowed to the owners of lands shall be paid before any drains are placed upon his land.

If any lands outside of the district are receiving benefits, the commissioners may so report to the court and ask that the lands be assessed for benefits, and the court shall order the owner to show cause why the same should not be so the lands be assessed for benefits, and the court shall order the commissioners may so report to the court and ask that assessed and he may appear and remonstrate against such procedure; but if the court finds that the lands are being benefited, he shall enter an order annexing them to the district and authorizing them to be assessed for benefits and the owner may appeal from such order within thirty days. After such order, if no appeal is taken, the commissioners shall make such assessment as shall be deemed proper in accordance with other assessments and shall file a report and give notice to the owners thereof twenty days prior to the hearing.

No bond or other money obligations issued by any drainage district shall be adversely affected by any subsequent change in assessments of benefits.

The owner of land that has been assessed shall have the right to use the drains to connect any and all laterals upon his lands.

The collection of any assessments made by the commissioners for construction and confirmed by the court shall not be restrained or obstructed by reason of any omission, imperfection or defect in the organization of any district or any proceedings occurring prior to the order confirming the assessments of benefits, but such order shall be conclusive as to the regularity of all proceedings relating to the assessments of benefits, unless appealed from within thirty days after the entry thereof.

SYNOPSIS OF THE DRAINAGE LAWS OF NORTH CAROLINA.

Prepared by CHARLES and RUTHERFORD, Merchants-Laclede Building, St. Louis Mo.

North Carolina has, from time to time, passed many statutes, local in character, creating drainage districts. And, of course, in any particular case a search for any such should first be made.

In 1909 a law, general in character, was enacted. This act, with certain subsequent amendments, is the statute herein analyzed. It may be found in Laws of North Carolina, (Public) 1909, Chapter 442, p. 743; amended Laws of North Carolina (1911), Chapter 67, p. 223; Laws of North Carolina (1913), Chapter 666, p. 1938; and Laws of North Carolina (1915), Chapter 431, p. 63, and Chapter 238, p. 314.

Proceedings for the establishment of a levy or drainage district may be initiated by a petition to the Clerk of the Superior Court of the county in which a part or the whole of the land in the proposed district is situated. This petition must be signed by a majority of the resident land owners or by the owners of three-fifths of the land to be affected. It must describe generally the location of the land and of the drains or levees to be constructed, and must set forth that the land is subject to overflow, or is too wet for cultivation, and that the public benefit, public health, convenience or welfare will be promoted by draining the same.

The defendant land owners who have not joined in the petition and whose lands are included in the proposed district are then served with writs of summons, or by publication (as to defendants who cannot be personally served or whose names are unknown).

On the return day the clerk appoints an engineer and two freeholders as a Board of Viewers to examine the lands and make a preliminary report thereon.

The Board of viewers is required to examine the land described in the petition and other land if necessary to locate properly the improvements petitioned for, having authority to make such surveys as may be necessary, and are required to return to the Clerk of the Superior Court within thirty days, unless the time is extended by the court, a written report setting forth:

- (a) Whether the proposed drainage is practicable.
- (b) Whether it will benefit the public health or any public highway, or be conducive to the general welfare.
- (c) Whether it would benefit the lands sought to be benefited, and
- (d) Whether or not all the lands benefited are included in the proposed district.

They are also required to file with this report a map of the proposed district showing locations of ditches or other improvements, and the lands that will be affected.

If the report is adverse, the petition is dismissed. But if the viewers report that the drainage is practicable, that it will benefit the public health or a public highway, or will be conducive to the general welfare, and if the court so finds, the court then fixes a day for further consideration of the report.

Notice of this hearing on the report must be given by publication for two consecutive weeks in some newspaper of general circulation within the county or counties, and also by posting notices thereof at the court house door and at five conspicuous places within the proposed district, that on the date named the court will consider and pass upon the said report. Fifteen days must intervene between the date of this publication and the posting of notices, and the date set for the hearing.

At the hearing the court hears and passes upon any objections offered to the report; and makes such changes in the boundaries of the proposed district as may be necessary to exclude lands not benefited, and to include any other lands that may be affected; the owners of such additional land being then made parties plaintiff or defendant and writs of summons issued for them.

After any such change in boundaries, the sufficiency of the petition is then verified to determine whether it conforms to the requirements of the statute. And the efficiency of the drainage or levees may also be determined and their location changed so as to make them more effective.

When the facts have been determined by the court and the boundaries of the district determined, the court then declares the establishment of the district, designating it by name or number.

The power of eminent domain is conferred upon such district for the purpose of acquiring rights of way or outlets through lands not affected by the drainage, the procedure being substantially as provided for condemnation of railroad rights of way.

Any person or corporation owning lands within the district which he or it thinks will not be benefited by the proposed improvements is given the right to appeal from the decision to the Superior Court of the county.

Upon the establishment of the district the court refers the report of the engineer and viewers back to them to make a complete survey, plans, and specifications for the proposed improvements, and fixes a time not exceeding sixty days within which this report shall be filed.

The engineer and viewers then go upon the ground and make a complete survey of the district, marking out the location of ditches or other improvements proposed, and from the notes thereof prepare accurate plats and maps showing the location of the ditches and other improvements, highways, railroads and incorporated towns, profiles of levees, drains, water courses, etc., estimating the number of cubic yards of excavation and fills, and the estimated cost thereof, and the cost of any work required to be done, and prepare plans and specifications thereof.

It is also made the duty of the engineer and viewers to assess the damages claimed by any one for land taken or inconvenience imposed, such damages to be considered apart from any benefit the land would receive from the proposed improvements, the same to be paid by the Board of Drainage Commissioners when funds come into their hands.

For the purpose of assessing benefits against lands in the district, the engineer and-viewers, having personally examined the lands, are required to classify them with reference to the benefit accruing from the construction of the proposed improvements, assigning them to five different classes designated as A, B, C, D and E; those lands receiving the highest benefit being included in Class A, those receiving the next highest benefit in Class B, and so on. And the total number of acres owned by any one person in each class and the total number of acres benefited are determined, and the total number of acres in each class in the entire district ascertained and set out in tabulated form.

The law then fixes the scale of assessments upon the different classes of land so returned by the engineer and viewers in the ratio of 5, 4, 3, 2 and 1; that is, as often as an assessment of five mills per acre is laid against land in Class A, four mills must be assessed against the land in Class B, and so on.

When the final report is filed it is examined by the court, and if found in accordance with the law it is accepted. If not in due form, it is referred back to the engineer and viewers for further action by them and subsequent report. When fully completed and accepted by the court, a day not less than twenty days thereafter is fixed by the court for a final hearing thereon.

Notice of this hearing must be given by publication in a newspaper of general circulation in the county and by posting notices at the court house door and at five conspicuous places in the district, publication being for at least two weeks before the final hearing.

The law provides that at this hearing any land owner may appear in person or by counsel and file objections to the report; and the court is required carefully to review the report of the viewers, and any objections filed thereto, and to make such changes as may be necessary to render substantial and equal justice to all land owners.

If, in the opinion of the court, the cost of construction together with the amount of damages assessed is not

greater than the benefits accruing to the lands affected, the court then confirms the report; otherwise the proceedings are dismissed.

The right of appeal, within ten days after confirmation of the report, is granted to any party aggrieved, but the hearing on the appeal is limited to exceptions theretofore filed by the complaining party, and no additional exceptions can be considered. After the district has been established and the survey and plan approved, the court appoints three persons as drainage commissioners, such commissioner having first been elected by the owners of land within the district in such manner as the court may prescribe. These commissioners when thus appointed immediately become a body corporate under the name and style of "The Board of Drainage Commissioners of _____ District," with the right to hold and convey property, to sue and be sued, and with such other powers as usually appertain to corporations, and such as are granted by the Drainage Act. They effect an organization by electing a chairman and other officers. The Treasurer of the County is made ex-officio Treasurer of the Drainage Board.

The Board appoints a Superintendent of Construction who furnishes a bond of \$10,000. With his advice the Board advertises for bids, lets contracts, re-lets the same when necessary, and carries on the work of constructing the proposed improvements, makes payment therefor, and performs other functions as provided in the Act.

After confirmation by the court of the classification of lands and the ratio of assessments of the different classes made thereon, the Drainage Board ascertains the total cost of the improvement, including damages awarded, costs, incidental expenses, and the amount sufficient to maintain the improvement for three years after completion, and deducts any special assessments made against any railroad or highway, and certifies, under the hands of the Chairman and Secretary of the Board, to the Clerk of the Superior Court, the said total cost as thus ascertained. This certificate is required to be recorded in the drainage record and to be open to inspection of any land owner in the district.

Thereupon the Drainage Board immediately prepares in duplicate the assessment rolls or drainage tax lists, stating thereon the names of land owners in the district so far as they may be ascertained from the public records, giving also a brief description of the several tracts assessed, and the amount of the assessment against each.

The first assessment roll must provide an assessment sufficient for the payment of interest on the bond issue accruing in the third year after the issue, and the installment • of principal maturing at the end of the third year, plus such amounts as may be payable for collection and handling of the same. The second assessment roll must make like provisions for the fourth year, and so on, the tenth roll being for the twelfth year. Each assessment roll must specify the time when collectible, and be numbered in its order; and the amounts assessed against the tracts of land must be in accordance with the benefits received as shown by the classification and ratio of assessments made by the viewers. These assessment rolls are signed by the Chairman and the Secretary of the Drainage Board, and one copy is filed with the Drainage Record and one delivered to the Sheriff or other county tax collector, the latter being accompanied by an order of court directing the collection of the assessments. The said assessments thereupon have the force and effect of a judgment as in the case of state and county taxes; and constitute a lien second only to state and county taxes, for the payment of the bonds and interest thereon; and are collected in the same manner and by the same officers as state and county taxes are collected. They are made payable on the first Monday in September in each year, and if not paid by the 31st day of December following, it is the duty of the Sheriff or tax collector to sell the land or lands so delinquent, sale being made at the Court House Door on the first Monday of February of each year unless continued for cause to the first Monday in March. The proceeds of such sale are required to be paid to the County Treasurer in order that he may have funds to meet the payments of interest and principal upon outstanding bonds.

It is made the duty of the County Treasurer, without any previous order from the Drainage Board, to provide and pay the installments of interest at the time and place as evidenced by coupons, and also the annual installments of principal, etc., evidenced by the bonds, and he becomes guilty of a misdemeanor and subject, upon conviction, to fine and imprisonment if he willfully fails to make prompt payment of interest and principal; and is also made liable in a civil action for all damages which may accrue either to the drainage board or to the bond holders.

If the total cost of the improvement is less than the average of twenty-five cents per acre, the Drainage Board assesses the lands in the district, in accordance with their classification, in one installment. But where the total cost exceeds an average of twenty-five cents per acre, the Drainage Board is required to give notice for three weeks by publication in some newspaper published in the county, if there be such newspaper, and also by posting notices at the court house door and at five conspicuous places in the district reciting that they propose to issue bonds for the total cost of the improvement, stating the amount of bonds, the rate of interest thereon and the time when payable. Thereupon any land owner who does not wish to pay interest may, within fifteen days after the publication, pay to the County Treasurer the full amount of the assessment against his land, and such land is thereupon released from liability to be assessed for the improvement. But it continues liable for future assessments for maintenance or any increased assessment authorized under the law.

Every land owner who fails to pay the full amount as aforesaid within the time specified, is deemed as consenting to the issuance of drainage bonds. The act provides that in consideration of the right to pay in installments he waives his right of defense to the payment of any assessment because of any irregularity, illegality or defect in the proceedings prior to that time, except in case of an appeal as in the act provided.

At the expiration of fifteen days after publication of notice the Drainage Board may issue bonds for an amount

equal to the total cost of the improvement, less such amounts as may have been paid in cash, to the County Treasurer, plus an amount sufficient to pay interest on the issue for the three years next following the date of issue. These bonds bear six per cent. interest per annum, payable semi-annually, and are payable in ten equal installments, the first maturing at the expiration of three years from the date of issue, and one each year thereafter for nine years.

The Board is required to sell these bonds at not less than par.

They are required to be numbered by the Drainage Board and recorded in the drainage record, which must specifically set out the lands embraced in the district on which the tax has not been paid in full, and which is to be assessed as in the Act provided.

If the drainage board is in default either as to principal or interest for a period of six months, the holder or holders of the bonds upon which default has been made are given a right of action against the district or the Drainage Board, and the court is authorized to issue a writ of mandamus against the district and its officers, including the tax collector and the treasurer, directing the levying of a tax or special assessment as in the Act provided, and directing also the collection of the same, in such sum as may be necessary to meet any unpaid installment of principal or interest and the costs of the action.

The Act also confers upon the holders of such bonds any other remedies which may be authorized by law, and the right to institute suit against any officer on his official bond for failure to perform any duty imposed by the Act.

The bonds and coupons are exempt from all county or municipal taxation or assessment, whether imposed for purposes of general revenue or otherwise, and the interest thereon is not subject to taxation as for income, nor are the said bonds and coupons subject to taxation when constituting part of the surplus of any bank, trust company or other corporation. And when constituting a part of such

surplus they are to be deducted from the total assets in order to ascertain the taxable value of the shares.

If, under the circumstances set out in the Act, an additional issue of bonds becomes necessary, these may be uttered after notice issued by the court to all the owners of land within the district, in the manner provided in the Act, and after a finding by the Court that the additional issue is advisable and necessary and an order authorizing and directing the same. The additional issue is limited to twenty-five per cent of the original issue.

The Act contains appropriate provisions for assessments as against public highways and rights of way and other property of railroad companies, also for assessments for maintenance and repairs of the improvements, also for a re-levy after confirmation of assessment where the same has been modified by a court of superior jurisdiction, (but for some unforeseen cause it cannot be collected), to provide any deficit that may have been caused by the order of said court or unforeseen occurrence.

The Act provides that it shall be liberally construed in order to promote the reclamation of wet and overflowed lands; that where the proper notices have been given, collection of assessments shall not be defeated by reason of any defect in the proceedings occurring prior to the order confirming the final report of the viewers; that such order shall be conclusive that all prior proceedings were regular and according to law, unless they were appealed from; and that even if on appeal the court releases any person or modifies his assessment, this shall not affect the rights of any defect in the proceedings occurring prior to the order order constitutes a waiver of any illegality in the proceedings.

• SYNOPSIS OF THE CONSERVANCY ACT OF OHIO.

Passed February 6, 1914.

Prepared by Ezra M. Kuhns, Secretary of Miami Conservancy District, Dayton, Ohio.

1. Organization of District. Upon a petition being filed with the Court of Common Pleas of any county in the State, stating certain conditions, such as the necessity for the proposed work and that it will be conducive to the public health, safety, convenience and welfare, a Conservancy district may be organized for the purpose of constructing works to prevent floods, regulating stream channels, reclaiming wet and overflowed lands, regulating the flow of streams, diverting water courses, and building reservoirs, canals, levees, etc. A Common Pleas judge from each county affected shall sit in this and subsequent proceedings.

2. The Court appoints three directors in whom is lodged the supervision and management of the proposed work. It is the duty of the Board of Directors upon their qualification to prepare a plan for the improvements for which the District was created. Such plan shall include such maps, profiles, plans and other data and descriptions as may be necessary to set forth properly the location and character of the work, and of the property benefited or taken or damaged, with estimates of costs and specifications for doing the work. Notice of the completion of such plan shall be given by publication, and any interested party may file written objections. After a hearing by the Board of Directors the Board shall adopt the plan as the Official Plan. Objections may be carried to the Conservancy Court, which, after a hearing, may reject the plan or approve it as the Official Plan of the District.

3. The Board of Directors shall appoint three appraisers, who shall constitute the board, and whose duties it shall be during the preparation of the Official Plan to become familiar with the nature of the same, and after the adoption of the Official Plan to appraise the benefits of every kind

to real property within or without the District which will result from the organization of the district and the execution of the Official Plan. These shall also appraise the damages sustained and the value of the land and other property necessary to be taken by the District. The work of the appraisers shall be reported to the Conservancy Court for its approval. The right to appeal to a jury from an award as to compensation for damages or benefits is preserved. The appraised benefits become the basis and security for a bond issue.

4. The moneys of every District organized consist of three separate funds: (a) A preliminary fund, by which, is meant the proceeds of the ad valorem tax authorized for the purpose of paying the preliminary expenses. (b) Bond fund, by which is meant the proceeds of levies made against the special assessments of benefits. (c) Maintenance Fund, which is a special assessment to be levied annually for the purpose of upkeep, administration and current expenses.

5. To pay the cost of the work the Board of Directors may issue bonds not to exceed 90% of the total amount of the assessments, exclusive of interest, levied under the provisions of the Act in denominations of not less than \$100, bearing interest from date at a rate not to exceed 6% per annum, payable semi-annually, to mature at annual intervals within 30 years, commencing not later than 5 years, to be determined by the Board of Directors, both principal and interest payable at the office of the treasurer of the State of Ohio. Said bonds if bearing less than 6% interest may be sold below par, but they shall be sold at such a price that the total payment of principal and interest shall not be greater than would have been required if the bonds had borne 6% interest and had sold for par and accrued interest.

6. The Board of Directors shall each year determine, order and levy the part of the total assessments levied under the Act, which levy shall be certified over to the county authorities for collection at the same time and place as regular taxes.

7. All conservancy assessments and taxes provided for under the Act, together with all penalties for default in payment of the same shall until paid constitute a lien, to which only the lien of the State for general state, county, city, village, school and road taxes shall be paramount, upon all the lands and other property against which such taxes shall be levied as is provided in the Act.

8. The liens so established and declared may be enforced at the option of the Board of Directors by action on delinquent tax bills or assessment bills made and certified by the county auditor. In the event of any default in the payment of interest or principal in any bonds issued pursuant to the Act, and if the District or its proper officers shall fail or neglect to enforce the payment of any unpaid tax or assessment, the holder of the bonds may for himself and for the benefit of all others similarly situated, enforce the said liens by suit or action against the land or property on which the tax or assessment has not been paid, and against the said District, and lands may be sold to enforce the said lien.

9. Districts may be formed under the Act for irrigation; and the law provides for the union of districts, organization of subdistricts, and the transferring of improvements proceeding under other laws to the provisions of the Conservancy law.

10. The law is to be liberally construed. Questions of validity are to be advanced in courts; and certain other acts conflicting with the provisions of the Conservancy Act in regard to improvements of this or similar character, or regulating or limiting power of taxation or assessment, and otherwise interfering with the execution of the law according to its terms, are declared to be in operative as to this Act as if they did not exist. The law invests the Board of Directors with plenary power to effect the protection, reclamation or irrigation of the land or other property in the District, and to accomplish all other purposes of the District; and for the purpose of construction they may advertise and let contracts to the lowest or best bidder, who shall give a good and approved bond with ample security conditioned upon the carrying out of the contract.

11. The Board where necessary for the purpose of the Act shall have a dominant right of eminent domain over the right of eminent domain of railroad, telegraph, telephone, gas, water power and other companies and corporations, and over townships, villages, counties and cities.

SYNOPSIS OF OKLAHOMA DRAINAGE LAWS.

Prepared by CHARLES and RUTHERFORD, Merchants-Laclede
Building, St. Louis, Mo.

Revised Laws of Oklahoma, 1910 Chapter 27.

Session Laws Ok., 1911, Chapter 132, p. 289.

Session Laws Ok., 1913, Chapter 115, p. 215.

Session Laws Ok., 1913, Chapter 166, p. 381.

Session Laws, Ok., 1917, Chapter 579, p. 288.

The Board of County Commissioners of any county at a regular meeting, when they deem it to be for the public health or utility, or of benefit to agricultural lands, or necessary for draining any lands, roads, etc., has authority to construct drains and ditches or to alter existing drains and natural non-navigable watercourses and to form drainage districts. They have exclusive jurisdiction to hear and determine contests and objections to the creation of these districts, and all matters connected with them, both before and after the organization, except as provided by statute.

The districts have the power of eminent domain to condemn lands necessary for the construction of the drains, the only exception being that a right of way through an incorporated town cannot be taken without the consent of the authorities.

In order that the county commissioners may obtain jurisdiction to establish a district, a petition signed by five or more residents of the county who claim that they will be affected and will be assessed, must be filed with the county clerk, setting forth the necessity of the improvement, a general description thereof, and stating whether or not it is desired to issue bonds. With this petition must be filed a bond for at least fifty dollars for each mile of improvement, with two sureties, to secure costs and expenses if the petition is refused.

If the commissioners finally determine that the lands to be embraced in the district will be benefited, they have power to order the improvement, without any additional

petitions. If they find otherwise, then signatures either of 50% of the owners, or of resident owners of 50% of the acreage to be affected, are necessary before the district can be established.

On the filing of such a petition the commissioners appoint three resident and disinterested freeholders as viewers, and direct the county surveyor, or any expert surveyor named by them, to assist them; and they shall take oath for the faithful performance of their duties. They at once view the land and report whether the proposed improvement is practicable and necessary, and of utility and benefit, and if they find that it is, they embody in their report recommendations in regard to the best route for it, the covering or bridging of any portions where this seems necessary; and in regard to the letting of the work of construction, whether it should be let by allotment to the several persons interested, or by contract without allotment. This report is entered in the clerk's record.

When this report is filed, the commissioners, if in session, or the clerk in vacation, makes an order of record, fixing the time for hearing the petition and the report. Notice is given by publication in a newspaper for two weeks, reciting the pendency of the petition, the appointment and report of the viewers, the location of the drain and the time of hearing.

Objections in writing may be filed with the county clerk on or before the day of hearing. If the commissioners find in favor of the improvement, the land that may later be found to be benefited shall constitute a drainage district which shall be designated by number. If the decision is adverse, the proceedings are dismissed at the cost of the petitioners.

The commissioners may in their discretion require a bond to secure the payment of all expenses of viewers, surveyors, notices and costs, if for any reason the drain is not finally constructed; and they may issue certificates of indebtedness for such expenses secured by such bond.

If the commissioners find that the proposed drain is necessary for agricultural or sanitary purposes, or will be conducive to the public health, or will be a public utility, such finding is recorded and certified to the judge of the district court of the county, with the request that he appoint three disinterested freeholders of the county to make a new and additional survey. He then gives ten days' notice of this request by publication in a newspaper of general circulation and at the time stated therein makes the appointment, which is certified to the commissioners. They then order the new viewers to make a new survey of the line of the proposed improvement, marking on the ground the exact location where in their judgment it will be most effective, determining the dimensions and form, the amount of earth to excavate, the disposition thereof, the cost per cubic yard of each section of one hundred feet, and of the whole work, and to make a report, profile and plat of the same. The viewers also file a schedule showing the names and residences of the owners of all lots that will be benefited, damaged or condemned and the damage or benefit of each tract of forty acres or less. They estimate the cost of location and construction separately and apportion it to each tract in proportion to the benefits resulting to it. If so ordered, they also allot and apportion to each tract of land, road, or railroad, the work of construction, or the expense thereof, in proportion to the benefits or damages. They specify the manner and time in which the improvement shall be made. They make a plat showing the complete drain and the boundaries of each lot, road or railway to be benefited and taxed, and the name of the owner. They have discretion to vary somewhat if necessary from the line of the proposed improvement described in the petition.

Upon the filing of this report, the County Clerk publishes a notice for four weeks in some newspaper, stating the day set for hearing, the names of all landowners affected and requiring them to appear and make any objections or amendments they may have. On the day set the commissioners hear the report and the objections, if any. If they find that the assessments of expense and of damages

and benefits to each tract are correct, and that the apportionment of the expense to each tract is in proportion to the benefits and damages, the report is confirmed. It is provided, however, that if fifty per cent of the resident landowners or the owners of fifty per cent of the acreage file written protest against the improvement, the proceedings shall be dismissed. The commissioners may amend the report so as to make it fairer and juster, and at any time before the completion of the improvement, they may, on petition of fifty per cent of the resident landowners or of the owners of fifty per cent of the acreage affected, change the location and specifications of the improvement, if they find it expedient.

Any person whose lands are affected may file, on or before the day set for the hearing of the final report, exceptions to the apportionments made by the viewers or to their action on any claim for compensation. These exceptions are heard and determined by the commissioners, who hear witnesses and take other evidence.

Any aggrieved person may appeal within ten days of the date of the order appealed from on any or all of the following questions:

1. Whether just compensation has been given for property appropriated.
2. Whether proper damages have been allowed for property.
3. Whether the property in question has been assessed more than it will be benefited or more than its proportionate share of the cost of the improvements, according to the provisions of this law.

If any person interested in land appropriated fails to file exceptions to the report of the viewers, he is estopped from prosecuting any action to vacate it.

The assessments of expense are in proportion to the benefits received from the particular improvement in question, by drainage only or by the protection from overflow, regardless of whether the improvements pass through the land; and are pro-rated in the proportion that the benefit each tract receives bears to the total amount of benefit. The

amount of costs reported by the viewers and for inspecting and receiving the work, and all fees, etc. are included. In estimating damages consideration is taken of the property appropriated and the direction of the drain across the land.

If the amount assessed, is insufficient to pay the estimated cost, or the actual cost, because of the increasing, on appeal, of the amount of damages, or the decreasing of the assessment, or because of irregularities in the proceedings invalidating the assessment in whole or in part, the commissioners appoint three new viewers, who proceed as in an original assessment, and apportion and assess damages, benefits and expenses anew. This assessment supersedes the original one. However, any bonds or warrants, issued upon the first report, are not affected in any way by the second report and assessment.

If the improvement benefits a public or corporate road or railroad, the owner is assessed as in the case of a private individual.

Provision is made for a drainage commissioner to attend to the upkeep of drains, etc. He has power to condemn the right of way for an improvement.

The commissioners appoint a surveyor to attend to the letting of the contract, receiving bids, etc., in the manner provided for in the law. If two-thirds of the resident land owners petition for the appointment of a particular person, he must be appointed.

Provision is made for the contractor's bond, for re-letting, etc.

The assessments made by the viewers and collected by the assessors bear interest not exceeding 6%, as fixed by the commissioners, and together with the costs of collection constitute a lien on the land, crops and rents, inferior only to the lien of the state, county and municipality for taxes, and are collected and become delinquent in the same manner as the state, county and school taxes. Assessments falling on lands which are exempt from taxation may be pro-rated among the other lands or paid out of the county funds. If such land becomes subject to taxation, it is made to bear its

share of the expense. The public lands of Oklahoma are taxable for this purpose.

All costs except for delinquent assessments and those taxable to the petitioners are paid first from the county treasury and refunded out of the first money received on assessments, or by sale of bonds.

Provision is made for keeping records showing the amounts paid, due, etc.

If it is prayed for in the petition, the commissioners may issue bonds in denominations of not less than one hundred dollars. An order is made, at the time the assessment roll is confirmed, or at any time thereafter, that within a limited time any owner may pay the assessment on his land; after notice published once each week for two consecutive weeks in some newspaper of general circulation published in the county, that afterwards bonds will be issued.

As soon as convenient after the expiration of the time set out in the notice, the commissioners meet and adopt a resolution reciting the amount of the assessment, the amount released on appeal, the amount paid and the amount unpaid. The last is divided into not more than ten convenient annual installments, and the amount of each, in dollars and cents, and the year it is to fall due, is specified. The first installment of the assessment must be payable in not more than four years and the others annually thereafter. Each shall be enough to pay the principal of the bonds issued against it and the probable cost of collection. The order then provides for the issuance of the bonds of the county for the account of the drainage district. The bonds cannot be issued for an amount greater than the corresponding assessment and the assessment is at once appropriated to the payment of the bonds.

The bonds may bear any date subsequent to the date of the confirmation of the assessment and may mature at such time as the commissioners shall fix and may be made payable at the office of the county treasurer or at any bank or fiscal agency in the United States.

The bonds are binding obligations on the drainage district and the only defense against their validity is forgery

or fraud. And the commissioners may sell them on the best terms possible, but not at less than par. The proceeds are turned over to the county treasurer for the use of the drainage district.

If appeals from the assessments are pending, bonds to the full amount of the assessment may be executed, but specific bonds equal in amount to the assessment appealed from shall be held back. When the appeal is decided, they may be issued, after being adjusted, by endorsement, so as to conform to the amount of the tax available to pay them. Or new bonds may be executed.

The bonds need not all bear the same date, but may be issued in installments. Any surplus of the proceeds of an assessment remaining after the payment of the installment of bonds is applied to the general maintenance of the drains. Unpaid assessments bear six percent interest from the date of confirmation until paid. If the bonds are issued at a time of year when under the revenue laws it is impossible to collect interest for the current year in time to promptly pay the next installment of interest on the bonds, the commissioners may appropriate a sufficient sum from the county treasury.

The bonds may be issued against the assessments on property privately owned and on that of public service corporations, and not in anticipation of any assessment levied against any county, municipality, road district, or other municipal corporation, nor against the real estate of any school district. Such assessments must be paid in cash or in time warrants, as the corporation elects, and reported to the commissioners before the date of the confirmation of the assessment.

The surveyor inspects all work as completed and, if in accordance with specifications, accepts it, subject to the approval of the commissioners. If a land owner does the work on his allotment, the assessment on each tract of land on which the work is completed is thereby paid.

Provision is made for bridges and culverts; for the upkeep, and repair of the drains, and for allowing land-owners to cut ditches through the land lying between their

lands and the public drain. Additional assessments for repairs, on notice, may be made by the commissioners.

Land owners, with the permission of the commissioners, may construct lateral drains on terms.

A city or town may improve a natural water course for drainage or sewerage on plans and specifications approved by the city authorities; and benefits may be assessed against the city or town as in the case of individuals. Bonds or warrants, and a tax to pay the same, may be voted at an election for that purpose.

A district embracing territory in two or more counties may be formed by filing petitions in each county and the commissioners of each county must authorize the formation of the district. The commissioners of all the counties must proceed jointly. Viewers and an engineer are appointed; reports, estimates and apportionments are made, and bonds issued, as in cases of districts wholly within one county, but such proceedings are had in each county separately.

SYNOPSIS OF OREGON DRAINAGE LAWS.

Prepared by WILLIAM A. JOHNSON, Esq., Spalding Building, Portland, Oregon.

(Chapter 340, General Laws of Oregon, 1915, as amended by Chapter 414, General Laws of Oregon, 1917).

FIRST. A petition for the formation of a drainage district must be signed by the record owners of fifty per cent in acreage of a contiguous body of swamp, wet or overflowed lands and shall state:

1. The name proposed for such district.
2. The boundary lines of the district, or a description of all the lands included therein.
3. The total acreage.
4. The names of the record owners of land in said district, and the acreage owned by each.
5. An allegation that the proposed reclamation or protection is for sanitary or agricultural purposes, will be conducive to the public health or welfare, or of public utility or benefit.
6. An allegation that all of the lands included in said proposed district are properly included therein, and will be beneficially affected thereby.
7. An allegation that the benefits will exceed the damage to be done and that the best interests of the land included and of the owners as a whole and of the public at large, will be promoted by the formation thereof.
8. An allegation that the formation of a drainage district under the provisions of this Act is a proper and advantageous method of accomplishing the reclamation and protection of the lands included therein.
9. A brief, general, informal statement of a proposed plan of reclamation as will enable the court to determine that there is a reasonable probability that the objects sought may be accomplished.
10. An agreement that the signers will pay all expenses incurred and any tax that may be levied against their

lands, for the purpose of organizing or attempting to organize, the proposed district.

11. A prayer asking that the lands described, or such as may be found by the court to be properly included in the proposed district, shall be declared organized into a drainage district. Such petition shall be verified by one or more of the petitioners.

SECOND. Notice of hearing on the petition. After filing, the county clerk shall cause notice of the hearing on the petition to be given by publication for four consecutive weeks in a newspaper published in the county, the last insertion to be made at least fifteen days prior to the date fixed by the court for the hearing thereon. The statute prescribes the form of notice which includes the petition, including the signatures thereto.

THIRD. Hearing on the petition. On the date set the court has a public hearing at which evidence is offered and received for and against the petition. Thereupon the court makes its findings upon the facts and enters its order based thereon, either dismissing the petition or decreeing the organization of the District. From this order an appeal lies to the Circuit Court.

FOURTH. Board of Supervisors. Within thirty days after entry of decree of organization the county clerk calls a meeting of land-owners, which is given by a notice published in a newspaper of the County at least ten days prior to the meeting, at which meeting each owner has a vote in person or by proxy for each acre of land in the district owned by him. (Majority of acreage necessary to constitute a quorum at land-owners meeting). Three supervisors are voted for and the three receiving the highest number of votes are elected. The supervisors then determine by lot the terms of their office which is respectively one, two and three years. Thereafter, a new one is elected every year for a three year term at the annual election. In case of vacancy the remaining supervisors fill same until the next annual meeting. Supervisors take oath of office, choose one of their number president, select a secretary, who may or

may not be a member of the board, adopt a seal and keep a record of their proceedings. Supervisors are required to report at annual meeting what work has been done. Supervisors are allowed actual transportation expenses but no compensation unless land-owners at annual meeting shall determine to pay compensation, which in that event shall not exceed five dollars a day. Secretary is ex-officio treasurer; gives bond, receives all moneys and disburses only on warrants issued by the district. Supervisors are required to have treasurer's books audited every year and make full report thereof at annual meeting of land-owners.

FIFTH. Chief Engineer. Within thirty days after organizing Supervisors appoint a chief engineer, who has control of all engineering work, makes all surveys, and reports to supervisors in detail all lands that will in whole or in part be improved or reclaimed by any system of drainage or levees that may be out-lined or adopted, with maps, plans, and profiles therefor. This report is then adopted by the Board, filed with the Secretary, copied into the Records and denominated "the plan for reclamation."

SIXTH. Organization Tax. Board of Supervisors as soon as elected and qualified levy a tax of not to exceed \$1.00 per acre to defray preliminary expenses, which is due and payable within sixty days after levy.

SEVENTH. Commissioners. Secretary files copy of "plan of reclamation" with County Clerk and thereupon County Court appoints three commissioners, one of whom shall be a civil engineer, two of whom shall be freeholders, and none of whom shall be land-owners or related within fourth degree to any land-holder in the district. Commissioners qualify, elect a chairman, view the lands and assess benefits and damages, based on the adopted "plan of reclamation," which they have no authority to change, and report to the Court their findings. Clerk then gives notice in statutory form for three consecutive weeks of filing of report and of hearing thereon. Exceptions may be filed to report and on date fixed Court hears and passes on exceptions. Certified copy of Report as finally approved by the court then

filed in both office of County Clerk and Secretary of the Board as permanent records.

EIGHTH. Construction Work. Contract therefor let to lowest responsible bidder after advertisement or Board may do work under supervision. If contract let, must be in writing and sufficient bond in favor of the district given for performance thereof. Chief Engineer shall superintend all work and report to Board from time to time on progress thereof.

NINTH. Taxes. (1) After decree of court on report has been filed supervisors levy a tax on all lands to which benefits are assessed as in their judgment may be necessary to pay costs of completion of "plan of reclamation" plus ten per cent for emergencies. Said tax is apportioned and levied in proportion to benefits assessed and in case bonds are issued the interest thereafter to accrue thereon is included, but said interest is not considered a part of the cost of construction in determining whether or not the expense of the improvements is in excess of the benefits assessed.

(2) Each year supervisors shall levy annual instalment of tax and shall certify same to the county assessor, and the tax collector shall collect same along with the State and County taxes and same shall be governed by the laws relating thereto. County Treasurer shall thereafter pay over and account for all moneys so received to the Treasurer of the district.

TENTH. Warrants. Shall be issued only on order of Board and shall be drawn on treasurer. If upon presentation there are no funds in the treasurer's hands, such fact shall be endorsed thereon after which same shall draw interest at 6%, but no interest shall be allowed after there are sufficient bonds to pay said endorsed warrants and interest, notice of which fact the treasurer shall give by publication.

ELEVENTH. Changes in Plan of Drainage or in boundaries of District. Adjacent land-owners desiring to be included or the Supervisors may file petition for change in boundaries or Supervisors may file petition for amendment to "plan of reclamation." Procedure thereafter very similar

to that heretofore detailed relative to original organization.

TWELFTH. Bonds. Board of Supervisors may issue and sell bonds in a sum not to exceed ninety per cent of the taxes levied, bonds to bear interest at not to exceed six per cent, payable semi-annually and to mature at annual intervals commencing not later than five years. Said bonds shall not be sold for less than ninety-five cents on the dollar. In event original tax levy insufficient to pay principal and interest, an additional levy may be made by Supervisors therefor.

THIRTEENTH. Further Tax Provisions. (1) If necessary Board may levy a "maintenance tax" which shall not exceed in any one year ten per cent of the benefits assessed.

(2) When original tax levy found insufficient to complete work, or new plans formulated requiring additional expenditures a further tax therefor may be levied, provided that the total of all levies shall not exceed the total amount of benefits assessed.

FOURTEENTH. Eminent Domain. For all necessary purposes the District has the right of eminent domain.

SYNOPSIS OF RECLAMATION LAWS OF TENNESSEE.

Prepared by CHARLES and RUTHERFORD, Merchants-Laclede Building, St. Louis.

Chapter 185, Acts of 1909, and amendments. (chapters 25 and 37, Acts of 1913; chapters 61, 62 and 63, Acts of 1915; chapter 26, Acts of 1917).

Sec. 1. "The County Court of any county in this State is hereby vested with the jurisdiction, power and authority at any regular, special or adjourned session to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed, as hereinafter provided, any levee, ditch, drain, or water course, or to straighten, widen, deepen, or change any natural water course in such county, or provide for the same being done whenever the same will be of public utility or conducive to the public health or welfare and as hereby provided. The court here vested with this jurisdiction and authority is the County Court held and presided over by the County Judge or Chairman, and not the Quarterly County Court, and all references in this Act to the County Court is to the court so held by the County Judge or Chairman, unless otherwise stated."

Sec. 2. Before any district may be established or any improvement made, a petition must be filed in the county clerk's office, signed in person, (or by authorized attorney or agent) by one or more owners of land affected or liable for assessments, setting forth (a) by metes and bounds, or otherwise, a general and intelligent description of any body of wet lands or lands subject to overflow; and a statement that (b) the public health or welfare will be promoted by making certain specified improvements; and giving (c) the starting points, routes and termini. This petition should be verified, and must be accompanied by a bond conditioned for the payment of expenses. If it shows that 60% in acres of land in the district sought to be created is owned by the petitioners, and if it is accompanied by a

general plat and description, and a "description by surrounding landowners" is given in the petition of the respective tracts of land therein, and the names of nonsigning owners, and if the petitioners ask for a provision of funds to pay preliminary costs, and the court deems it expedient, it shall set a day for a hearing, and give notice to nonsigners named in the petition, by publication for three consecutive weeks in some newspaper published in each county having lands in the proposed district, the last publication to be at least ten days before hearing day. The court finding in favor of making provision for funds, this section provides for determining the amount thereof and for levying and collecting it, and making it a lien. Petitioners may employ counsel to assist in preliminary matters necessary to the establishment of the district, and also thereafter, so far as the court may think needed. The contract of employment must be in writing, and be approved by the court as to amount. The petitioners may choose from their number a committee of three or five to act for them in preliminary matters, and it is authorized to bind them. This committee may elect necessary officers, keep a record of its proceedings, and receive such compensation as may be fixed by the court payable out of the funds of the district when established.

Sec. 3. After the filing of the petition and the clerk's approval of the bond, the court at its next session appoints a disinterested competent engineer, and provides him with a copy of the petition. He is required to examine the lands described therein, and any others that would be benefited by the proposed improvements; to survey and locate such improvements as will be of public benefit or utility or conducive to the public health or welfare; and to report his proceedings to the clerk, setting forth the beginning, route and termini of the proposed work, the plan of reclamation, with plats and profiles, showing approximate length and course through each tract when practicable, and the total length, course and elevation of lakes, ponds, depressions, and obtainable fall, the boundary of the proposed district, the description of each tract, the name of the owner thereof as

shown by the tax books, and the probable cost of the improvements.

Sec. 4. If the plan filed by the engineer meets the approval of the court, it orders the clerk to give a notice of the engineer's report by publication for two consecutive weeks in a newspaper published in the county wherein the proceedings are pending, setting out the time, place and court of hearing, a brief statement of the purpose of the hearing, and a reference to the petition on file, for further information. This notice need not describe any lands or names of owners, and will be notice to all persons entitled thereto. The last publication of the notice must be at least ten days before the date of hearing. If the proposed district embrace lands in more than one county, then publication of the notice must be made in a newspaper in each county. Proof of publication is made as provided in chancery cases.

Sec. 5. Persons claiming damages must file their claims at least three days prior to the date set for hearing; and if not so filed, they are deemed to have waived their claims. Infants and any person non compos mentis without regular guardians, may have guardians *ad litem* appointed, who shall file claims for damages within three days after appointment.

Sec. 6. On the hearing the court determines the sufficiency of the petition and permits its amendment in form and substance before final action, and on adverse finding dismisses it. On favorable finding, the court adjudges the necessity for the improvement, and if no claims for damages have been filed, the court, if it deems it advisable, locates and establishes the district, or may, in its discretion, refuse to do so. If claims for damages have been filed, the court does not establish the district, but must appoint as viewers, an engineer and three disinterested freeholders not related to any interested party, nor themselves interested in a like improvement.

Sec. 7. These viewers, after being sworn to act impartially and faithfully, view the premises and report in writing the amount each claimant is entitled to. In estimating damages, the value of the land taken must be set out

without deduction, and due consideration given to incidental benefits.

Sec. 8. On consideration of the viewers report on damages, if the court finds that the probable cost is not greater than the benefited land should bear, and that the proposed improvement is conducive to the public health or welfare, or to the public benefit or utility, it then locates and establishes "such drainage or levee district" by order or judgment entered of record, and proceeds to determine the amount of damages sustained by each claimant, and award such as may seem just and right. Appeals may be taken to the circuit court, in five days, from the order establishing the district, or the award of damages. An appeal bond is required, but, in case of an appeal from an award of damages only, does not operate as a supersedeas. The result of the appeal in the circuit court must be certified to the county court. A jury trial is in the discretion of the circuit court, except where the parties are entitled thereto by the law of the land.

Sec. 9. When damages have finally been determined by the county court, they shall be paid, or secured to be paid upon terms, by the benefited parties; and the court enters an order condemning lands needed for rights of way, not exceeding 200 feet in width. The court may condemn other needed lands.

Sec. 10. After the district is established and damages paid or secured, and the court desires, it may order the district engineer, or some other appointed by the court, to make a more comprehensive and detailed report.

Sec. 11. When the district has been established, the court appoints three commissioners, one of whom must be a competent civil engineer, and two of whom are freeholders of the county, not living or interested in the district, nor interested in a like question, nor related to any one owning land affected thereby, who, after being sworn faithfully and impartially to perform their duty, proceed to inspect and classify the benefited lands, describing each tract, and giving the name of the owner thereof, making an equitable apportionment and assessment of cost-

etc., and make report thereof in writing. Lands receiving the greatest benefits are marked on a scale of 100, and those benefited in less degree are marked with such percentage of one hundred as the benefit received bears in proportion thereto, which classification, when finally established, becomes the basis for future assessments, unless for good cause shown a revision thereof is authorized. Large tracts may be subdivided when a more equitable classification can be made. Each tract must be specified "by reasonable description," and the name of the owner given as the same appears on the tax books, or as may previously have been adjudged in the proceedings.

Notice of the commissioners' report must then be given by publication in three weekly newspapers published in the county where the proceeding is pending, if there be that many, otherwise, in at least two, for two consecutive weeks, notifying all parties in any way concerned of the date set for the hearing, and when they may appear and be heard, the last publication to be at least five days before the date of the hearing. Names need not be given, but only a brief statement of the date and purpose of the hearing. On objections filed, the court may increase, diminish, annul or affirm any apportionment or assessment made, as seems just and equitable; but in no case is it competent to show that the assessed lands will not be benefited. The court then assesses such apportionment upon the benefited lands. A second assessment may be made when the first proves insufficient. If the court annuls the report in toto, the court may order the commissioners (or other commissioners who may be appointed) to make a new report.

(Note: Provision is made at this stage of the proceedings for the levy, collection and disbursement of a special assessment to pay costs and expenses of the proceeding when it appears that they have not otherwise been paid.)

Sec. 12. The assessments levied are collected in the same manner as county taxes. They should be kept as a separate fund, and disbursed for the purpose provided in the act.

Sec. 13. An appeal may be taken from the assessment, within five days, to the circuit court as provided in Section 8.

Sec. 14. The court may employ counsel to represent the district on appeals, and makes payment therefor out of the drainage fund.

Sec. 15. A complete record of the establishment and subsequent proceedings of the district must be kept by the clerk of the county court in a book to be known as the "Drainage Record."

Sec. 16. Provides for the amount of and payment of fees to the county clerk.

Sec. 17. When part of the work has been done and it is discovered that assessments for any reason cannot be enforced, the court proceeds against the benefited lands as in the first instance, but payments already made are credited. If any tract of land has been overlooked, or any interested party was not notified, such irregularity may be corrected and the court orders such land listed for assessment and interested parties notified, and proceedings are then had as in the beginning. As to the parties in court, the validity of the proceedings is not affected because of omission of lands and want of notice to some interested parties before the establishment of the district.

Sec. 18. After the establishment of the district, the court appoints two directors, owners of or interested in lands therein, one of whom shall have been a petitioner or successor in estate or interest to a petitioner, to hold office for two years; who, with the judge or chairman of the county court, constitute a board of directors of the district. This board has general control, management and supervision of its affairs, and makes improvement contracts therefor. Vacancies on account of removal may be filled for the unexpired time, and removals may be made by the court, for cause, on notice given and hearing had, with appeal allowed to the circuit court. The board elects one of its number secretary and one treasurer, and the judge or chairman of the county court is its chairman. The treasurer must give a \$25,000 bond for faithful accounting, etc.,

Sec. 19. After final adjudication of classification, apportionment, and assessment of benefits, the Board of Directors may let contracts for making the improvements, in sections or as a whole, in their discretion, to the lowest responsible bidder, first giving notice once a week for four consecutive weeks in some newspaper published in the county wherein the improvement is located, and by publication elsewhere as they may direct, of the time and place of letting, specifying the approximate amount of work in each section, time of commencement and completion of work, and reserving the right of rejection of bids. Bidders must deposit in cash or by certified check ten percentum of amount of bids, in no case to exceed \$10,000, such deposits to be returned to unsuccessful bidders; otherwise to be retained as a guaranty of good faith. Successful bidder must execute bond with approved security equal to twenty-five per cent. of the estimated cost of the work bid on, or deposit like sum in cash with the treasurer of the board, conditioned for faithful performance, etc.

Sec. 20. The Board of Directors may employ, on terms to be agreed on, a competent engineer to supervise the work of construction, and it may remove him at pleasure and contract with another. It may, after completion of the main improvement, employ a drainage overseer, define his duties and compensate him out of the district funds not needed for payment of bonds, and remove him at pleasure and engage another.

The engineer in charge of construction must furnish monthly estimates to the contractor, and on filing same the court issues warrants to 80% of the value of the work done, and on the engineer's certificate of completion, issues a warrant to the contractor for the balance due. Warrants are drawn on the County Trustee or Treasurer, as county warrants are drawn, payable out of the district funds. The engineer must give a bond, in a sum fixed by the board, payable to the county or state, and conditioned for the faithful performance of his duty. This bond must be filed with the county clerk and recorded in the Drainage Record.

Sec. 21. When public highways and railroads are benefited, the commissioners must report the amount of such benefit to such highways and railroads, and notice must be served upon the nearest station agent by writ directed to the sheriff running in the name of the state, commanding the railroad named to appear on a day set for hearing, served ten days before the date of the hearing, and notify it of the pendency of the petition and prayer thereof. It is not necessary that a copy of the petition should accompany the writ. In the case of public highways, the writ is served in like time upon the judge or chairman of the county court. When the assessment has been approved, it constitutes a personal debt against the railroad company; and as to highways is payable out of the general county or highway tax fund.

Sec. 22. Needed bridges are built at the expense of the county.

Sec. 23. Owners of benefited lands are authorized, on application to the Board of Directors, to connect lateral drains with the district improvements under the control and supervision of the Board of Directors.

Sec. 24. Assessments are collected by the county trustee in the same manner as county taxes are collected, or by bill in chancery, assessed lands only being liable for the assessment.

Sec. 25. Contains provisions relative to utilization of natural water courses.

Sec. 26. Sub-districts may be established in the same manner as original districts are established, the proceedings following the same course; but the assessments constitute a secondary lien.

Sec. 27. The court may fix the amount of the assessment to be paid each year, and issue "drainage bonds of the county" with interest not exceeding 6%, payable annually, and devote such bonds and accrued interest to payment of costs of construction, or sell them at not less than par with accrued interest. Bonds issued must mature in twenty years. If the cost of the improvement exceeds the estimate, a second assessment may be made and bonds issued.

Property owners may pay assessments in full to the county trustee at any time before bonds are issued.

The terms and maturities of bonds are fixed by the board of directors. The bonds are signed by the judge or chairman of the county court, and countersigned by the county clerk, each signing his name officially, and are verified by the county seal or seal of the county court clerk. They are issued for the benefit of the district in denominations of not less than fifty dollars, and are numbered by the county court and recorded by the county clerk in the drainage record, which record must specifically show the lands in the district upon which assessments have not been paid in full. They must show upon their face that they are payable only out of assessments on lands in the district. When the district lies in more than one county, each county court must determine whether bonds shall be issued to pay the cost of the improvement so far as the lands of that county are concerned; and if issued, must be signed as above stated, and be payable only out of assessments on lands in such county, as in districts wholly in one county. Bonds may be sold and paid for in installments as may be agreed upon with the purchaser. Deferred payments shall be secured by solvent bond, payable to the State of Tennessee or the district, conditioned for prompt payment, etc., and meeting the unanimous approval of the Board of Directors. Such bonds and resolution of the board approving it shall be recorded in the Drainage Record.

Sec. 28. Instead of issuing bonds, the board of directors may direct the issuance of long time warrants, drawn on the district or county trustee, payable at such times as assessments may be due, and bearing interest not exceeding 6% per annum.

Sec. 29. In cases of improvements to be located in more than one county, petitions signed by one or more landowners in each county shall be presented to the county court of each, and the court of the county having the largest percentum of land affected appoints a competent engineer to "make surveys, etc.," who proceeds as in cases of one county only, and makes duplicate reports, one for each

county; and each court proceeds as in cases of one county only until the time for appointment of viewers. The court of the county having the most land then appoints two viewers, and the court in each of the other counties appoints one of the viewers. These viewers then proceed to assess damages, etc., and report to each court.

Sec. 30. On the reports filed such proceedings must be had as in other cases, to the time for appointment of commissioners, when the court of the county having the most land appoints two of them, one of whom must be a competent engineer, and the other court or courts appoint the other. They must possess the same qualifications as hereinbefore provided. They proceed as in cases of one county only, and report to each court, and thereafter similar proceedings must be had as in cases of one county only.

Sec. 31. In such cases each court appoints one member of the board of directors, and the judge or chairman of each county court is a member of the board, the judge or chairman of the county court of the county having the most land therein being its chairman, and having two votes in case of a tie on any question. A secretary and a treasurer must be elected, who qualify as in cases of one county only.

Sec. 32. Assessments must be entered in a book provided for that purpose, called the "Drainage Assessment Book," such entry to be made as in taxes entered in tax books, showing tracts of land, amounts of assessments, etc., and be furnished to the county trustee for collection. It must be made out by the county court clerk of each county having lands in the district, and be made only once if practicable; and if not, then for a shorter time or for each year. Such assessments shall become due and delinquent at the same time as state and county taxes, and bear interest at the legal rate.

Sec. 33. Assessments are liens on lands assessed, and may be foreclosed, when payment has been delinquent sixty days or more, by bill in chancery filed in the court in the county where the lands lie, and a sale had. Such bills must be filed in the name of the county where the lands lie, against the owners, if known; if not, then against them as

such. All delinquent owners may be made defendants in one bill. When suits are desired to be instituted, the county trustee, upon request, must make a list of delinquent lands, showing owners as appearing in the Drainage Assessment Book, and certify to its correctness. This list is made *prima facie* proof of the facts certified, and sufficient to support a decree in the absence of competent rebutting proof. Proceedings are the same as in other chancery suits, except that a hearing may be had separately as to one or more defendants, and a sale had for cash. On report of sale, state, county and municipal taxes due shall first be paid, out of the proceeds of the sale. Confirmation of sale vests title in the purchaser, and if asked, a writ of possession will be awarded. Lands sold remain liable to other unpaid assessments, and may be redeemed within two years on payment to the clerk and master of the purchase price. Ten per centum is allowed the attorney bringing the suit and is charged in the judgment and repaid on redemption, and when redeemed the chancery court decrees title in the former owner, his heirs or assigns, and awards a writ of possession. If delinquencies jeopardize payment of principal or interest of bonds, the board of directors may borrow money on notes made in the name of the district, signed by it officially, to prevent default, and pledge delinquent assessments as security therefor. Persons under disability may have until one year after removal of disability in which to redeem.

Secs. 34 and 35. The provisions of these sections are covered by synopsis of other sections herein.

Sec. 36. Provides for compensation of engineers and fees allowed county officers.

Sec. 37. The failure of a contractor to perform the work according to the terms of his contract is compensated for by a forfeiture of the cash deposited or by damages on his bond to be recovered by suit in the name of the payee for the benefit of the district.

Sections 38, 39, 40 and 41 contain provisions relative to the establishment of "mutual agreement districts" and other matters not essential to a correct understanding of the general method of procedure.

AN ANALYSIS OF THE DRAINAGE LAWS OF THE STATE OF TEXAS.

By J. T. SLUDER, Esq., San Antonio, Texas.

The County Commissioners' Court of the several counties of the State are authorized to establish drainage districts in their respective counties, which districts may include towns, villages and other municipalities, or any part thereof, but no land shall be included in more than one district, upon the petition of twenty-five freehold resident property tax payers, or if there are less than seventy-five such citizens in the proposed district, then by petition of one-third of such taxpayers. Such petition must set forth the necessity, public utility and feasibility, the boundaries of such proposed district, and designate a name therefor, which must include the name of the County.

The Commissioners' Court shall set such petition down for hearing at some regular or special session of the Court, not less than thirty, nor more than sixty days from date of presentation of the petition. The Clerk of the Court shall give notice of the date and place of such hearing by posting a copy of such petition in five public places, four of which shall be posted within the proposed district, and one on the Court house door of the County within which the district is situated, for twenty days prior to the date of such hearing.

On the hearing on said petition, any person whose lands may be affected by the creation of such district may appear and oppose or contend for the creation of the district, and the Commissioners' Court has exclusive jurisdiction to hear and determine such contest.

If on such hearing the Commissioners' Court decides in favor of the establishment of said district, they shall so find, and enter their findings upon the records of said Court; and in such findings they may change the boundaries as set out in the petition, and they shall then appoint a competent civil engineer who shall, within the time prescribed by the

Court, go upon the land of the proposed district, make a survey and from such survey make preliminary plans, locating approximately the necessary canals, drains, ditches, laterals and levees necessary to be cleaned, deepened, straightened or constructed; estimate the cost of such improvements and probable cost of maintaining same for one year, and file his report with the Commissioners' Court.

The engineer is authorized to go outside of the proposed drainage district and determine the outlets for the canal, drains and ditches for said district. In making his report the said engineer shall furnish a map showing the beginning points and outlets of all canals, drains, ditches and laterals; the length, width, depth and slopes of the banks of all cuts and excavations; the estimated number of cubic yards of earth necessary to construct all levees, giving location and size of each.

When filed, the Commissioners' Court shall set the report down for hearing, at some regular or special session of said court, not less than twenty nor more than thirty days from the date of action of the Court on same, and the Clerk shall be required to give notice in the same way as required on filing of the petition.

At the hearing on said report, any person who is affected by the proposed district, whether resident of the district or not, can appear and object to any or all of said canals, drains, ditches and levees, as to location or number or capacity to drain the territory.

When the report is approved as submitted or modified or changed by the Commissioners' Court, the Court then orders an election to vote on the establishment of the district and the issuance of bonds, and which proposition and no other shall be submitted as follows:

"FOR THE DRAINAGE DISTRICT AND THE ISSUANCE OF BONDS AND LEVY OF A TAX IN PAYMENT THEREFOR."

Notice of such election shall be given by the Clerk of the Court by posting such notices in four public places within the district and one at the court house door of the County, for at least twenty days previous to date of such election,

which notices shall recite the action of the Commissioners' Court in establishing the district, the amount of bonds to be issued—which shall be within the engineer's estimate—the purpose of the issue, the date and places of holding the election, the proposition to be voted on, as above provided, and the names of the officers of election. None but resident taxpaying voters shall be allowed to vote who shall make oath of their qualification before being allowed to vote.

The ballot shall contain the proposition and none other: "FOR THE DRAINAGE DISTRICT AND ISSUANCE OF BONDS AND LEVY OF TAX IN PAYMENT THEREFOR." "AGAINST THE DRAINAGE DISTRICT AND ISSUANCE OF BONDS AND LEVY OF TAX IN PAYMENT THEREFOR."

The returns of such election shall show that two-thirds majority of the voters in said election sustained the proposition, or it shall be declared lost. If carried, an order shall be entered by the Commissioners' Court to that effect, naming and numbering the district.

After the election carries and the result has been recorded, the Commissioners' Court shall then appoint three drainage commissioners, who shall be freehold resident property taxpayers of the district, who shall hold office for a term of two years and who, after qualifying as required by law, shall have full and complete control of the drainage district.

The drainage commissioners shall then appoint a competent civil engineer to make maps and profiles showing the several canals, drains, ditches and location within the district, and give the estimated cost for the construction of each, and file his report with the Clerk of the Commissioners' Court.

The drainage commissioners can make any changes in the improvements of the district as their judgment may dictate, provided the cost of the improvements is not increased above the amount submitted in the election for the bond issue; or, if the drainage commissioners should decide that in their judgment more extensive improvements than those contemplated are necessary, they may so certify to the Commissioners' Court, which, upon hearing, may grant the re-

quest and order an election giving similar notices as those provided for for the original election, whereby additional bonds may be authorized and issued.

All bonds issued shall be in the name of the drainage district, shall be signed by the County Judge, attested by the County Clerk, with the seal of the Commissioners' Court affixed thereto; shall run not longer than forty years, and bear interest not exceeding six per cent. per annum, payable annually or semi-annually. The terms of such bonds shall provide the time, place, manner and condition of their payment as may be determined or ordered by the Commissioners' Court.

No suit shall be brought affecting the validity of any drainage district or the validity of any bonds issued thereby except in the name of the State of Texas, by the Attorney General upon his own, or upon the motion of someone else affected thereby.

When the bonds are issued they shall be submitted to the Attorney General for his approval, and if approved he shall so certify, and they shall be registered by the Comptroller, which said bond issue shall not exceed in amount one-fourth of the assessed value of the real estate of such district, as shown by the last official assessment prior to their issuance. After the bonds have been registered by the Comptroller, the certificate of the Attorney General shall be *prima facie* evidence of the validity of such bonds in every action, suit or proceeding in which their validity may be brought in question. The only defense that can be offered against the validity of such bonds shall be forgery or fraud.

The County Judge shall sell the bonds under the direction of the Commissioners' Court at not less than par and interest.

By order of the Commissioners' Court, authorizing the issuance of drainage district bonds, the court shall levy a tax on all the taxable property of the district, sufficient to raise the necessary fund to pay the interest as it accrues and provide for a sufficient sinking fund to redeem the bonds at maturity.

The County tax assessor and collector shall assess and collect the taxes of the drainage district and exercise the

same powers and perform the same duties as in assessing and collecting county and state taxes. The levy by the Commissioners' Court of a drainage district tax, as provided by law, shall create a lien on all the taxable property of the district to secure the payment of such tax, which liens shall be enforced in favor of the district the same as tax liens are enforced in the collection of county and state taxes.

Drainage Districts have the right of eminent domain in the location and construction of canals, drains, ditches and levees, and can condemn right of way through any of the property of such drainage districts necessary to construct the drainage improvements within and without the district. If necessary, the drainage commissioners can go into court, in the name of the district, and after hearing thereon, have land condemned necessary for all canals, drains, ditches, levees and laterals, and damages assessed therefor which must be paid by the drainage district to the owner.

The drainage commissioners can also acquire the necessary rights of way by gift, grant or purchase.

All canals, drains, ditches, levees and water courses cleaned or constructed shall be public property, and all property owners of the district shall have a right to drain therein.

The drainage commissioners of the district, or any other district officers or employes, shall have free access to all the lands of such district in the construction of the improvements, or to transact any other business pertaining to said district.

The drainage commissioners are required to keep the drainage improvements in proper repair.

Construction must be let on competitive bids, and awarded to the lowest responsible bidder, who must give bond in the amount of the contract price of such improvements.

The drainage commissioners are forbidden to have any pecuniary interest in any construction contract, either for themselves or any one else.

A drainage district is a body corporate, and can sue and be sued in any of the Courts of this State, and can contract and be contracted with, as any other public corporation.

SYNOPSIS OF THE DRAINAGE LAWS OF UTAH

Prepared by STORY and STEIGMEYER, Salt Lake City.

ORGANIZATION OF THE DISTRICTS.

Drainage districts may be formed by the Board of Commissioners of the county in which the land included in the proposed district is situated, or in case the proposed district extends into more than one county, then by the Board of Commissioners of the county in which the major portion in area of the land in the proposed district is situated, on petition of the owners of the land. The petition for the formation of the district must contain the name of the proposed district, describe the boundaries thereof and be signed by not less than a majority of the persons who own or control not less than one-third ($1/3$) in area of the land to be benefited by the proposed drainage system, or by not less one-third ($1/3$) of the persons who own or control a major portion in area of the land to be benefited by such system, as evidenced by the county assessment roll next preceding the presentation of the petition for the organization of the district. Such petition must be presented at a regular meeting of the Board of County Commissioners and must be accompanied by a bond executed by the petitioners in an amount equal to two per cent. (2%) of the cost of the proposed improvements and be conditioned to the effect that if the Board of County Commissioners shall not approve the petition, the petitioners will pay the cost of making preliminary surveys and such other expenses as may be incurred by the County Board.

When such petition is filed, the County Clerk is required to give three (3) weeks notice of the presentation and filing thereof addressed "to all persons interested." Such notice must state when and where the petition is filed, a general description of the proposed drainage system and of the lands to be included therein, the date of the meeting of the Board of Commissioners at which the petition will be heard, and must be posted in at least three (3) public places in the

district as well as published at least once a week for three (3) successive weeks in a news-paper published in the proposed district.

If any of the land owners of the proposed district are non-residents of the county, the petition must be accompanied by an affidavit giving the names and places of residence of such non-resident owners, if known, or if unknown stating that upon diligent inquiry their places of residence can not be ascertained. In such cases the County Clerk is required to mail a copy of such notice to each of such non-resident owners whose place of residence is known.

The Board of Commissioners may, in its discretion, allow such petition to be amended but no petitioner has the right to withdraw his name therefrom except by consent of a majority of the other petitioners, or where it is shown, to the satisfaction of the County Commissioners, that the signature of the petitioner desiring to withdraw his name was obtained by fraud.

The Board of County Commissioners is required to hear the petition on the date fixed in the notice or within four (4) weeks thereafter. At the hearing all persons upon whose land any of the proposed work may be constructed or whose land may be benefited or damaged thereby may contest the necessity or utility of the proposed work. Among other things the Board of Commissioners is required to ascertain whether or not the petition contains the signatures of the requisite number of land owners of the district. If such finding is in the affirmative it becomes conclusive upon the land owners of the district, but if in the negative, the petition must be dismissed. Within certain limits the Board of Commissioners may change the boundaries of the district from that stated in the petition but must exclude therefrom all lands which, in its judgment, will not be benefited by the proposed drainage system. The Board is also given discretion to include in the district, on petition of the owner thereof, such other lands as are susceptible of drainage by the same system.

If, at such hearing, it further appears, to the satisfaction of the Commissioners, that the proposed system is necessary

for the drainage of the land or sanitary purposes, they are required to make a finding to that effect and to make an order creating the district as well as appointing a Board of Supervisors of the district consisting of three (3) persons whose term of office is for one, (1), two, (2) and three (3) years respectively. Within ten (10) days thereafter the Board of Commissioners is required to proclaim the creation of the district and to publish such proclamation for a period of ten (10) days. Upon such proclamation and filing being made, the district becomes a body corporate with the usual powers of quasi municipal corporations, such corporate powers being exercised by the Board of Supervisors. A copy of the order of the Commissioners creating the district must be filed for record in the offices of the County Recorder and County Clerk of each County in which any portion of the land is situated.

At any time within six (6) months after the order of the Board of Commissioners creating the district is made, an appeal may be taken by any interested party to the district court of the county in which the district is situated. The court is required to advance such appeal on its docket for the purpose of having a speedy determination thereof, the procedure in such case conforming as nearly as may be to the procedure on appeals in civil actions.

DUTIES OF SUPERVISORS.

Within thirty (30) days after their election, the Supervisors are required to organize as a board and elect from among their number a President, Secretary and Treasurer. Each member of the Board is required to give a bond as supervisor and the treasurer is required to give a further bond as treasurer. The duties imposed upon the several officers of the district are such as are usually imposed upon corporate officers of the same character. They are also required to appoint a competent Engineer and to adopt a code of by-laws for the government of the business affairs of the district. The supervisors have the power to acquire, on behalf of the district, by purchase or by condemnation, all lands and other property necessary for the

construction, maintenance or improvement of the drainage system of the district and, as soon as may be after their appointment, are required to examine all of the lands proposed to be drained with a view of determining the feasibility of the project, the probable cost thereof, the annual cost of maintenance of the drainage system, what lands will be injured by the proposed work, the probable amount of damage which will be sustained by land owners by the construction of the work, and whether the aggregate amount of benefits derived will equal or exceed the cost of construction, and whether the proposed district, as described in the petition, embraces all of the lands which will be benefited or damaged by the proposed work. After making such investigation the supervisors are required to make a report to the County Commissioners of the result thereof, and if such report be that the cost of construction of the system is more than the benefits which will inure to the lands of the district in general by the construction of the work, the proceeding for the formation of the district must be dismissed by the Board of Commissioners at the cost of the petitioners.

The Board of Supervisors is also required to make a report each year to the Board of County Commissioners, showing the work done and money expended by them, upon the filing of which the County Commissioners set a day for the hearing of the report, notice of which must be published for a period of ten (10) days. At the appointed time the County Commissioners consider the report and objections thereto and if found correct are required to approve the same.

If the drainage project is found to be feasible, the supervisors are required to adopt plans and specifications for the work and give notice by publication, for a period of not less than twenty (20) days, of their intention to construct the project and calling for bids for the construction of the work in whole or in part. Bids must be opened in public, and the contract for the work and material let to the lowest responsible bidder. The contractor is required to give bond conditioned upon the faithful per-

formance of his contract, with sufficient sureties, in a penal sum equal to at least fifty per cent. (50%) of the contract price. The work must be done under the direction of the Engineer and be approved by the Board of Supervisors.

DISTRICT ASSESSMENTS.

On or before the first Monday in February of each year the Supervisors are required to prepare an estimate of the amount of money to be raised by taxation of lands of the district for the purpose of constructing and maintaining the drainage system, paying the interest upon the bonded indebtedness, creating a sinking fund for the redemption of the bonds and for the management of the affairs of the district, and to assess the entire amount so ascertained against all of the land within the district in proportion to the benefits resulting to each tract of land by the construction and maintenance of the drainage system. Lands included in county roads or railroads may be assessed in proportion to the benefits which accrue to the same. For the purpose of determining such benefits the Supervisors are required to view each tract of land within the district and to consider the damage as well as benefit which will inure to each particular tract from the construction and maintenance of the system, offsetting the damages against the benefits. When the assessment is made the Secretary of the Board of Supervisors is required to transmit the same to the Board of County Commissioners which in turn causes notice of the assessment, stating the amount of taxes and the date when the Board of County Commissioners will meet as a Board of equalization to hear and determine complaints, to be sent by mail to each land owner of the district. It is the duty of the Board of County Commissioners to equalize the assessments and to certify the same to the Treasurer of the County in which the land is situated, who enters the same on the tax rolls of the County and collects the taxes in the manner in which the general taxes of the County are collected. The taxes of the district become a lien upon the property assessed on the second Monday in March next succeeding the date on which they are levied.

ISSUANCE OF BONDS AND LIMIT OF INDEBTEDNESS.

When authorized at a special election of the land owners of the district, which must be called by the Board of County Commissioners not less than thirty (30) nor more than sixty (60) days after they request the same, the Board of Supervisors is given power to issue bonds of the district maturing in not less than ten (10) nor more than twenty (20) years and bearing interest, payable semi-annually, and at a rate not exceeding seven per cent. (7%) per annum. On twenty (20) days published notice the bonds may be sold at public or private sale but for not less than par value thereof and the proceeds of the same can be used for no other purpose than paying the cost of constructing the system.

The bonds are required to express on their face that they are to be paid only by taxes levied on lands within the drainage district and the whole issue cannot exceed the total amount of benefits assessed. The bonds when issued become a lien upon the lands of the district. The district has no power to incur indebtedness in excess of the express provisions of the act, by issuing bonds or otherwise, any excess indebtedness being absolutely void except that, for the purpose of effecting the organization of the district and carrying on the work contemplated by the act prior to the first assessment, the supervisors may incur indebtedness in an amount not exceeding ninety per cent (90%) of such assessment.

ANALYSIS AND SUMMARY OF THE DRAINAGE LAWS OF THE STATE OF WASHINGTON.

Prepared by BURCHAM and BLAIR, Spokane, Washington.

The drainage laws of the State of Washington comprehend three distinct statutes. The first, enacted in 1895, provides for creation of drainage districts within a single county, the second, enacted in 1909, provides for diking and drainage districts in two or more counties, while the third, enacted in 1913, provides for the establishment of drainage systems through the instrumentality of the county government without the incorporation of a drainage district, as provided for in the first laws.

DRAINAGE DISTRICT WITHIN A SINGLE COUNTY.

This law provides for the organization of a drainage district in the nature of a quasi municipal corporation within a single county, the district, so created, to have the right to sue and be sued, to have perpetual succession, and to be managed by a Board of Commissioners. The district is formed by filing of a petition with Board of County Commissioners, which must be heard by the County Commissioners, after due publication. If the County Commissioners act favorably upon the petition, an election must be held to decide upon the establishment of the district and to elect commissioners, who thereafter are to be elected annually. The Board of Commissioners, thus elected, are the governing body of the district and have charge of the construction, operation and maintenance of its system. The district is given the power of eminent domain, in order to acquire property needed for its purposes, and procedure is provided for condemnation, substantially as in other cases, and procedure in court is also provided for the assessment of benefits to the various land owners affected, and the assessments for construction and maintenance are based upon the jury's verdict.

The assessments are collected the same as other taxes upon the basis of the judgment entered upon the jury's

verdict and subject to the same interest and penalties and, in case of delinquency, with the same right of redemption. Assessments become due as determined by the Board of Commissioners and are payable at the same time as general taxes. The Board of Commissioners are prohibited from making any single call for assessments exceeding 25% of the estimate for costs of proceeding and construction of the system.

The system may be connected with private drains or a lower drainage system where necessary or desirable upon substantially similar proceedings through the court.

Maintenance costs are determined by estimate of the Commissioners and are levied against the lands in the same proportion as original assessments.

Bonds of the district may be issued by the Board of Commissioners upon petition of majority of all the land owners either for the total cost of construction and the establishment of the district or to fund outstanding warrants or obligations. They cannot be sold for less than par and must be in denominations of not less than \$100.00 nor more than \$1,000.00, payable to bearer in not more than ten years nor less than five years and bear interest not exceeding seven per cent per annum, payable annually. They may be exchanged for warrants at not less than par and a sinking fund for their liquidation must be created five years before maturity. Bonds must be called in numerical order and paid whenever there is \$2,000.00 in the sinking fund. Assessments must be levied annually to pay coupons. Unpaid coupons are considered as warrants and draw interest from presentment upon usual endorsement by the County Treasurer that they are not paid for lack of funds.

All lands of public corporations and public lands are subject to the assessments for the district.

Dissolution of the district may be effected by order of court upon petition of not less than two-thirds of the land owners owning not less than three-fourths of the lands.

DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES.

This law differs primarily from previous one, in that it applies to both diking and drainage districts and partic-

ularly in that it applies to lands in two or more counties. The district is formed by petition signed by one hundred free-holders or a majority of the freeholders in the district in each county and filed with the Board of County Commissioners of each county; each County Board must thereupon notify the State Commissioners of Public Lands and he thereupon must fix a time and place for the joint meeting of himself and the several Boards of County Commissioners. This joint body determines whether to form the district or not. If it decides upon majority vote to form the district an election must be called for the approval of the organization and election of five commissioners, who hold office for two years.

If the election for the organization of the district carries, the Board of Commissioners elected at the same time is the governing body of the district and has charge of the construction, operation and maintenance.

Under this law the assessment is made not by the court, as in previous instance, but by action of the Board itself, which must make its levy in proportion to benefit. It must prepare an assessment roll and have a hearing of objections of anyone affected. At this hearing any person affected may appear and make objections and the Board may make such changes as appear just and in due course must equalize and confirm the assessments. The determination of the Board is subject to appeal to the courts. The lien of assessments, as finally fixed, is paramount to all other liens except for taxes and other special assessments. They are collected by the several County Treasurers the same as other taxes. Within thirty days parties affected may pay the whole of their assessments; otherwise they are payable in not more than ten annual installments with interest at not more than seven per cent, with the right to pay the entire assessment at any time by paying interest to the end of the year.

The district has power of eminent domain and the power to improve water courses and to construct ditches, canals, flumes, locks, flood barriers, etc. when necessary for its purposes. Cities and state or school lands may be included in the district and road districts and counties must pay their proportion of funds.

Bonds may be issued by the Board to run not longer than ten years and subject to annual call and must be called by Commissioners, when funds are available, in numerical order.

Collection of assessments are made by the various County Treasurers, the Treasurers of the counties paying the smaller assessments forwarding the collections to the Treasurer of the County paying the largest proportion, who is the disbursing officer of the district.

Sale for delinquent assessments is made by the County Treasurer as in case of sale for delinquency of general taxes. Any lands sold to the district may be disposed of by the Board of Commissioners for benefit of the district.

The Board has power to improve water courses flowing through the district and of condemnation of municipal lands.

Re-assessments may be made where necessary because assessments have been reduced upon some land or because assessments are invalid.

Maintenance assessments must be made annually and collected the same as in school districts.

DRAINAGE IMPROVEMENT DISTRICTS UNDER THE LAWS OF 1913.

This act provides for the establishment of drainage systems, or improvement of existing systems, by persons who shall not desire to incorporate as a drainage district under the laws heretofore analyzed. The distinct characteristic of this system is that it does not become a body corporate but instead operates through the county officials, under the direction of the Board of County Commissioners. In its general aspects the result under this system is similar to ordinary local improvement districts in municipalities.

The system is instituted by a petition by property owners filed with the Board of County Commissioners. Thereupon the County Engineer must examine and report concerning the petition and what changes, if any, should be made. If the County Engineer reports adversely the petition must be dismissed. If he reports favorably, he must make necessary surveys, plats and estimates and the Board gives the district a serial number. The County

Engineer must also make schedule and estimate of all property benefited and damaged, specifying the acreage and manner in which improvement is to be made and the schedule of property damaged with a blank for property owners to accept the estimated amount of damages and benefits. Upon filing the engineer's report a day for hearing is set and notice given by publication. At the hearing any objection must be heard by the Board of County Commissioners and necessary changes made.

If settlement cannot be made with parties affected on the plan above outlined, condemnation proceedings must be instituted by the County Attorney, for which purposes the right of eminent domain is given counties in behalf of such district. In such proceedings benefits must off-set against damages and county warrants are issued from the current expense fund either upon settlement or condemnation.

The construction of the system is made under the direction of two elected supervisors who, together with the County Engineer, comprise the Board of Supervisors of the district, and one member of which must be elected annually. The Board may make changes in plans only with approval of the Board of County Commissioners.

The cost of the system must be paid by property benefited. Assessments bear interest not exceeding eight per cent per annum and may be represented either by warrants or bonds as the County Commissioners determine. If warrants, they are payable in not to exceed five annual installments; if bonds, they are payable in either ten or fifteen years as the Board may determine. The Act provides a schedule of installments to be applied in the case of each the ten year and fifteen year bonds. The bonds must also be payable "on or before" their respective maturity dates and must be called by the County Treasurer in serial order whenever at any interest date there is sufficient money in the fund of the district to pay the principal of one or more.

All costs of construction and other expenses are paid in the first instance by warrants drawn upon the County Treasurer upon the proper fund and bear interest not to exceed eight per cent until paid or called as other warrants of the county are called.

When the improvement is fully completed the County Commissioners must appoint a Board of Appraisers, consisting of the County Engineer and two others, to apportion the cost of improvement against the property and the county or counties, cities and towns within the district, in proportion to benefits.

Cities, counties or irrigation districts and public lands benefited by the system must bear their several proper proportion of the benefits.

When the appraisers have completed their apportionment and filed their schedule the County Commissioners must fix a time for hearing thereon and give notice. Any person interested may file objection and the Board may make such changes as it finds just. When the Board has finally approved the apportionment, the County Auditor must prepare an assessment roll and file it with the County Treasurer for collection. Assessments are a lien upon the property, dating back to original determination to proceed with the improvement. Installments of assessments are collected at the same time and in the same manner as general taxes and bear interest at the rate of ten (10) per cent. per annum, and the lien may be foreclosed, as in the case of general taxes.

Re-assessment may be made to cure irregularities, which make any assessment uncollectible and supplemental assessment may be made to meet a deficiency where property does not sell for enough to pay assessments against it or where property originally assessed was not subject to assessment.

The Board of Supervisors must make an annual statement of amount necessary for maintenance and the Board of Commissioners must levy an assessment to meet same in same proportion as upon the original apportionment, unless such apportionment be changed upon a hearing, which may be had for that purpose, in the even-numbered years.

Upon the same mode of proceeding as the original establishment, the system may be abandoned in whole or in part; lands may be stricken or lands may be added. The striking of lands shall not affect assessments theretofore made against them. When new territory is added to the

district it may be made to pay its proper proportion of value of existing system.

Drainage systems under this Act may be in two or more counties; the County Engineers of each county to examine and make report and the County Engineer having the greatest length of the system to be engineer of the system and member of several Boards, provided for in the Act.

NOTE: Unless otherwise indicated, the numbers following the paragraphs are references to the sections of Remington & Ballinger's Annotated Codes and Statutes of Washington.

DRAINAGE DISTRICTS WITHIN A SINGLE COUNTY.

ORGANIZATION OF DISTRICT.

Any portion of a county which contains five or more inhabitants and freeholders, may organize a district, to be designated: "Drainage District No.———of the County of ———of the State of Washington," and shall have the right to sue and be sued, shall have perpetual succession, and shall adopt and use a seal. It is to be managed by a Board of Commissioners, hereinafter provided for.

§4137.

DISTRICTS, HOW FORMED.

A petition must be filed with the Board of County Commissioners, signed by the owners of a majority of the acreage in the proposed district; it must set forth: (1) the object, (2) the number of acres to be benefited, (3) the boundaries, (4) the names of all freeholders in the proposed district, so far as known, (5) a brief description of the proposed system, (6) the outlet for drainage, (7) the route of the system, together with the spurs, branches and termini, (8) and that the proposed system will be conducive to the public health, convenience and welfare, and increase the public revenue, and that the establishment will be of special benefit to the property included therein. A bond of Five Hundred Dollars (\$500.00), to pay the cost incurred if the district be not formed, must also be filed.

§ 4138, Laws of 1913, page 260.

PUBLICATION OF PETITION, HEARING THEREON, ETC.

The petition must be published for at least two weeks, before presentment to the County Commissioners, with a notice stating the time of meeting at which it will be presented. At the hearing on presentment, any person may make objections to the establishment of the district or its proposed boundaries. The Commissioners shall fix the boundaries, which must not include lands not described in the original petition, unless a supplemental petition therefor be made by some person owning lands to be included. On substantially the same procedure, an old district may be extended in area.

§ 4139, Laws of 1913, pages 261—263.

ELECTION TO ESTABLISH DISTRICT AND ELECT COMMISSIONERS.

If the County Commissioners find that the district will be conducive to public health, welfare and convenience, and will increase the public revenues, and be of benefit to the lands included, they must call an election to decide upon the establishment of the district, and also to choose three drainage commissioners of the district. Notice must state boundaries, name and acreage, and be published for at least two weeks, designating the place of voting and the names of the persons to be voted for. The County Commissioners must also provide for the conduct of the election.

§ 4140.

ELECTION OF DRAINAGE COMMISSIONERS.

The election provided for in § 4140 must be held on the day set. The County Commissioners must canvass the vote, and if the election is carried, enter upon their minutes an order declaring the organization of the district and the election of the three persons having the highest votes, as commissioners. Copy of the order must be filed with the Secretary of State, and the three commissioners elected must give bond in the sum of Twenty-five Hundred Dollars (\$2500.00).

§ 4141.

SUBSEQUENT ELECTIONS OF COMMISSIONERS.

Thereafter the Board of Drainage Commissioners must be elected annually upon the first Tuesday after the first Monday in December of each year.

§ 4142.

ANNEXATION OF OTHER LANDS TO DRAINAGE DISTRICT.

Lands may also be added to an existing district by petition to the Board of Commissioners of the district itself, signed by the owners of a majority of the acreage to be added, and by at least ten freeholders within the old district. Thereupon the Board must call an election in both the district and in the territory proposed to be added. If the election is carried, the new territory is thereby annexed and becomes liable to assessment for extensions, improvements, maintenance and repairs.

Chapter 42, Laws of 1913.

EMINENT DOMAIN.

Drainage districts have the power of eminent domain, or they may purchase real property needed, by direct purchase.

§ 4143.

COMMISSIONERS—DUTIES OF.

The Board of Commissioners have exclusive charge of the construction and maintenance of the system, and constitute the executive officers of the district, with full power to bind the district. Vacancies are to be filled by the judge of the Superior Court.

§ 4144, Laws of 1913, page 264.

CONSTRUCTION OF SYSTEM—PROCEDURE.

The Board of Commissioners must file petition with the Superior Court, with the route, plans, maps, specifications, estimate of cost, persons benefited, and the number of acres owned by each, and state therein that the system is conducive to the public health, convenience and welfare, and will increase the value of all the property within the dis-

trict, for purposes of revenue. The names of all owners through whose land the right of way will go, and the amount of land necessary to be taken, and an estimate of the value of the land taken, must also be given, and all such land owners must be named defendants.

§4145, Laws of 1913, page 264.

SURVEYORS AND DRAFTSMEN.

Surveyors and draftsmen may be employed to compile data.

§4146.

SUMMONS—HOW SERVED.

Summons must be served personally on persons within the state, giving ten days notice if served within the county, and twenty days notice if served without the county. In case of non-residents or persons who cannot be found, summons must be served by publication, giving thirty days notice.

§4147.

APPEARANCE—JURY—VERDICT—DECREE.

Defendants may appear jointly or severally. The court must pass upon the question whether the contemplated improvement is practicable and conducive to public health, welfare and convenience, and will increase the value of the lands in the district for purpose of public revenue, whether the contemplated use is really a public use, and that the property sought to be taken is necessary for the improvement, and that the improvement has a good sufficient outlet. It must call a jury of twelve persons (unless the parties consent to a less number, which must not be less than three) to assess damages and benefits. The jury must make a separate assessment of damages in each case and fix a maximum benefit permitted to be derived by each owner, municipality, public highway, corporate road or district, from the improvement. Decree must be entered upon the verdict, directing the commissioners to issue their warrant on the County Treasurer, to each person entitled.

§4148.

INCLUSION OF OMITTED LANDS—APPEALS.

If any lands benefited are omitted, proceedings may be re-opened to bring them in and have them assessed in the same way as other lands. Any person feeling himself aggrieved may appeal to the Supreme Court from any judgment, within thirty days after the entry thereof; and no bond is required and no stay allowed.

§4149.

DISMISSAL OF PROCEEDINGS.

Dismissal of proceedings may be made, if the costs will exceed the benefits, or the improvement not be practical or not conducive to public health, welfare and convenience, or will not increase public revenue or will not have a sufficient outlet. Judgment for costs shall be entered in such case against the district.

§4150.

DAMAGES—HOW PAID.

Damages to be paid to the parties entitled under the order of court. If conflict of claims, they shall be determined by action, before the order shall issue.

§4151.

There is no paragraph No. 4152.

PAYMENT FOR BENEFITS, BY ROAD DISTRICTS.

If the jury verdict finds that any roads will be benefited, the amount shall be allowed by the County Commissioners, as for other road work, and warrant shall issue against the road and bridge funds of the county.

§4153.

ADDITIONAL ASSESSMENTS AND MAINTENANCE.

Additional assessments for construction, and all assessments for maintenance shall be based upon benefits, so found by the jury, and the proportion thereof applying to public roads shall be paid by the county in the same way.

§4154.

COLLECTION OF ASSESSMENTS.

Transcript of the judgment shall be filed by the Clerk with the County Auditor, who must enter the same upon the tax rolls, the same as other taxes, against the lands of the person affected, and the same shall be collected the same as other taxes; and subject to the same interest and penalties, and in case of delinquency, with the same right of redemption. Assessments shall become due as designated by the Board of Commissioners, and shall be payable at the same time as general taxes. No one call by the Commissioners for assessments shall exceed 25% of the estimate for costs of the proceeding and construction of the system.

§4155.

TAX FOR COSTS.

In case of dismissal of the proceedings, a tax for costs must be levied by the Commissioners, on the basis of the last general assessment for state and county purposes, to pay the costs. Land may be sold, as in other cases, if the tax is not paid within sixty days.

§4156.

CONSTRUCTION OF THE SYSTEM.

Construction of the system shall be commenced by the Commissioners at once after the filing of the transcript of the judgment. The Commissioners shall have full charge of the management thereof; they may let all or any part by contract. The contractor must give bond in double the contract price, for the faithful performance of his contract, and an additional bond in like amount, for the payment of all bills incurred.

§4157.

CHANGES—HOW EFFECTED.

Substantial changes in the plans may be made only by the consent of all the parties affected thereby; if this cannot be obtained, petition must be filed in court, and substantially the same proceeding as in the case of original petition must be had.

§4158.

PAYMENT OF CONTRACTORS.

Payment to contractors to the extent of 75% may be made as the work progresses, the final 25% to be held until the expiration of ninety days after completion of the work.

§4159.

CONNECTION WITH PRIVATE DRAINS.

Connection with private drains may be made by petition in the Superior Court, substantially the same as on the original petition.

§4160.

CONNECTION WITH LOWER SYSTEM.

In case any district is above another district theretofore established, and above another system of drainage already constructed therein, the upper district may have its system connected with the lower, by a proceeding in court by which all land owners in the lower district are joined. The jury must first find that the lower system, together with any changes proposed by the petition, will be adequate, otherwise the proceeding terminates. The lower system may appear and show that the cost of maintenance will be increased, and if the jury so finds, judgment shall be entered accordingly for the amount to be paid by the upper district each year to the lower district.

§4161.

INCORPORATED TOWNS MAY BE DRAINAGE DISTRICTS.

Any incorporated city or town may be a drainage district, or the whole or any portion of such town may be joined with other territory in a district.

§4162.

MAINTENANCE.

An estimate of maintenance costs shall be made by the Board of County Commissioners, on or before November 1st of each year, for the succeeding year, and certified to by the County Auditor, and shall be levied against the lands in the same proportion as the original assessment.

§4163.

COMMISSION—OFFICERS AND DUTIES—ISSUANCE OF WARRANTS.

The Board of Commissioners shall elect a chairman and secretary; may issue warrants for the payment of claims, in form the same as county warrants, which shall bear the legal rate of interest, from the date of presentation for payment.

§4164.

BONDS.

Bonds may be issued by the Board of Commissioners upon petition of a majority of all the land owners owning land within the district, for the total cost of the construction of the improvement and the establishment of the district. The Board may also thereafter issue bonds to fund any outstanding warrants or obligations of the district. Bonds cannot be sold for less than par.

§4165.

BONDS—TERMS OF.

Denominations, not less than \$100.00 nor more than \$1000.00, payable to bearer in not more than ten years nor less than five years; interest not more than seven per cent, payable annually, with coupons for interest payments.

§4166.

BONDS—HOW EXCHANGED.

Bonds may be exchanged for warrants at not less than par.

§4167.

BONDS—LIQUIDATION OF.

A sinking fund must be created by the Commissioners five years before the bonds become due, for the purpose of liquidating them.

§4168.

BONDS—PAYMENT OF.

The County Treasurer must call in the bonds in numerical order whenever he has \$2,000.00 of the special sinking fund on hand, call to be made by advertising in the official county newspaper, interest to cease thirty days after the first publication.

§4169.

COUPONS—PAYMENT OF.

Assessments must be levied annually. Coupons shall be considered as warrants, shall draw interest from the presentation of same, if not then paid.

§4170.

BONDS—REGISTRATION OF.

Bonds must be registered by the County Treasurer before delivery, and the proceeds of sale of bonds must be paid to the County Treasurer.

§4171.

WARRANTS—PAYMENT OF AND INTEREST UPON.

Warrants must be presented to the County Treasurer, and he must endorse upon them the date of presentment, also if they were not paid, that they were not paid for want of funds. Unless so endorsed, they shall not bear interest. The Treasurer must call in warrants by demand for two weeks in the official county newspaper. Interest ceases thirty days from the date of first publication.

§4172.

FORMS OF JURY VERDICT.

At any trial by jury under this chapter, the jury verdict may be upon separate findings or separate forms of verdicts on all questions submitted.

§4173.

NO LANDS EXEMPT.

All lands of public corporations shall be subject to the provisions of this act.

§4174.

PUBLIC LANDS ASSESSMENTS.

Public lands assessments to be made the same as in case of private persons, but the assessments shall be paid out of the general funds by the proper authorities.

§4175.

SERVICE FEES.

Fees for service of process shall be the same as in civil cases.

§4176.

COMMISSIONERS—COMPENSATION OF.

Commissioners' compensation shall not exceed \$3.50 per day. Application for compensation to be filed with the court, duly verified. Thirty days notice of the filing and of the amount of the claims must be posted in four public places in the district, and any person interested may file objections, and the court shall hear the application and any such objection, and make allowance accordingly. Claims to be paid as other claims are paid. The amounts to be paid must be charged to cost of construction or maintenance, as the case may be.

§4177.

NATURAL WATER COURSES—IMPROVEMENT OF.

Natural water courses or existing ditches or drainage systems, in whole or in part, may be improved as a part of the system, but vested rights for mining, irrigation or manufacturing shall not be disturbed.

§4178.

POWER OF COURT.

The court may compel the performance of the duties prescribed by this chapter, by mandatory injunction.

§4179.

DISSOLUTION OF DISTRICT.

Dissolution of a district may be effected by order of the Superior Court, upon the petition of not less than two-thirds of the lands owners, owning not less than three-fourths of the land, upon four weeks posting of notice and publication, ditches, dikes, drains and other improvements to remain for the common use of the land owners.

§4180.

SALE OF OTHER PROPERTY.

Sale of other property may be made by order of court directed to the sheriff. The proceeds shall be applied to the payment of indebtedness. If indebtedness exceeds proceeds, the amount of the excess shall be levied against the lands and added to general taxes; if the amount received exceeds the indebtedness, it must be distributed to the land owners in proportion to the value of their holdings.

§4181.

DIKING AND DRAINAGE DISTRICTS IN TWO OR MORE COUNTIES.
POWERS—DESIGNATION.

A portion of two or more counties containing one hundred or more inhabitants and freeholders, which requires diking or drainage, may be organized into a district, to be known as "Diking and Drainage District No. _____ in _____ and _____ Counties of the State of Washington," with power to sue and be sued, perpetual succession, and shall adopt and use a seal.

§4182.

FORMATION.

A petition substantially the same as in the case of one county, signed by one hundred freeholders, or a majority of the freeholders in the district in each county, in case there are less than two hundred in the proposed district, must be filed with the Board of County Commissioners of each county. A bond of One Thousand Dollars (\$1000.00), to pay costs in case the district is not organized, must also be filed.

§4183.

HEARING UPON THE PETITION, PROCEDURE, ETC.

Each county board must notify the State Commissioner of Public Lands; thereupon he must fix a time and place for the joint meeting of himself and the several Boards of County Commissioners, not less than five nor more than twenty days after the mailing of the notice, to consider the petition. Such joint body shall determine whether to form

the district, and if it so determines, shall fix the boundaries, which may embrace more or less lands than embraced in the original petition, must make a finding that the district will be conducive to the public health, welfare and convenience, and will increase the public revenue, and be of benefit to the majority of the lands to be included. A majority of all members of the joint body shall be necessary to establish the district. If the district be established, the body shall also designate and fix the first election, which shall be not less than thirty, nor more than sixty days later.

§4184.

ELECTION FOR APPROVAL AND CHOICE OF COMMISSIONERS.

An election must be called by the joint body for the approval of the organization and election of five commissioners. Notice for two weeks must be published in two newspapers and posted in ten public places, and must particularly describe the proposed boundaries. Only qualified electors are entitled to vote. If the district be established, the commissioners shall hold office for two years, and until their successors are elected and qualified. Not more than three commissioners may be chosen from one county, and not more than two, if the district comprises more than two counties. Vacancies shall be filled by the Board of County Commissioners of the county in which the vacancy occurs. Elections thereafter are to be held every two years, on the first Tuesday in October.

§ 4185.

COMMISSIONERS' OATH—BOND—ASSESSMENT OF BENEFITS.

Commissioners must take oath and give bond in the sum of \$5,000.00. The Board must organize, and choose a chairman and secretary. It must then prepare specifications and details, together with an estimate of the cost of the proposed construction. Upon adoption of the system, the Board shall proceed to levy an assessment upon the real property in the district, in proportion to benefits. It must prepare an assessment roll, fix a day for hearing objections by anyone affected, and give twenty days notice by

mailing, and also by ten days posting, and two weeks publication in a newspaper in the district.

§ 4186.

OBJECTIONS TO ASSESSMENTS.

Any person affected may appear and file objections, and on the hearing proof may be offered on both sides, and the Board shall make such changes as may appear just and may, by notice to any person affected, increase assessments upon any particular tract. When the assessments are equalized and confirmed, whether by the Board's original order or by appeal to the court, the secretary must certify the same to the County Treasurer for collection.

§ 4187.

APPEAL TO THE COURTS.

Any person who feels aggrieved by the final assessment, may appeal to the Superior Court of the county, and the case must be tried in the Superior Court *de novo*. A further appeal may be taken from the Superior Court to the Supreme Court.

§ 4188.

LIEN OF ASSESSMENTS AND COLLECTION.

The lien of assessments is paramount to all other liens except for taxes and other special assessments. Each County Treasurer shall proceed to collect assessments the same as other taxes. He must give at least ten days notice that unless assessments are paid within thirty days, they will be payable in not more than ten annual installments, with interest at not more than seven per cent., and thereafter shall proceed to collect the amount due each year, upon published and mailed notice.

§ 4189.

POWERS OF COMMISSIONERS.

The commissioners shall conduct the business, execute contracts, appoint agents and employes, and prescribe their duties.

§ 4190.

POWER OF EMINENT DOMAIN OR PURCHASE.

Districts have the power of eminent domain, or may acquire real property by purchase.

§ 4191.

CONSTRUCTION AND MAINTENANCE.

Construction and maintenance are under the exclusive charge of the Commissioners, who shall be the executive officers of the district.

§ 4192.

PROCEDURE IN EMINENT DOMAIN.

Procedure in eminent domain to be prosecuted by the Board of Commissioners, for and in the name of the district itself, and shall be the same as in other cases of eminent domain.

§ 4193.

IMPROVEMENT OF WATER COURSES, AUXILIARY DITCHES, ETC.

Districts have the power to improve all watercourses whenever necessary for the objects of their system, also to construct all needed auxiliary ditches, canals, flumes, locks, flood barriers, etc., necessary to protect the land of the district from overflow or to preserve or maintain the system .

§ 4194.

INCLUSION OF CITIES.

Cities may be included in districts.

§ 4195.

INCLUSION OF PUBLIC LANDS.

State or school lands may be included, but such lands shall not be sold for delinquency, but the state shall pay the assessments.

§ 4196.

BONDS.

Bonds may be issued by the Board. They may not run longer than ten years, and must be subject to annual call. They may be given to the contractor in payment for work,

or may be sold on thirty days published notice, but if the contractor does not agree to take the bonds, the work must not be commenced until the bonds are sold and the proceeds put in the improvement fund.

§ 4197.

PAYMENT BY LAND OWNERS; CALLS FOR BONDS.

Any landowner may pay his entire assessment within thirty days after notice of assessment, without interest, or may pay at any time afterwards by paying interest to the end of that year. Bonds must be called by the Commissioners whenever funds are available, in numerical order.

§ 4198.

ASSESSMENT TO ROAD DISTRICTS AND COUNTIES.

Proportional benefits to roads, bridges or on account of the health of the people of any county, shall be paid for by the county affected, by appropriation of the Board of County Commissioners.

§ 4199.

PAYMENT BY CITIES.

Incorporated cities or towns not included within a district, but within one of the counties in which a district lies, the general health of which is benefited by the improvement, may pay out of their general funds or by assessment, not exceeding $1/2$ mill per dollar, such amount as the City Council may deem just and proper.

§ 4200.

RIGHTS OF WAY.

Rights of way may be acquired either by purchase or condemnation.

§ 4201.

DUTIES OF OFFICERS OF BOARD.

The chairman shall be the presiding officer and perform such duties as may be prescribed by the Board. The secretary shall perform the duties prescribed by the Act, and such others as may be fixed by the Board. A majority of

the Board constitutes a quorum, but a majority of the entire Board is required to authorize any action.

§ 4202.

COLLECTION OF ASSESSMENTS.

Collection of assessments shall be made by the County Treasurer. The Treasurer of the county paying the smaller amount, must forward quarterly to the Treasurer of the county paying the largest proportion, who shall be the disbursing officer of the district and pay out its funds upon orders drawn by the president and secretary under the authority of the Board.

§ 4203.

SALE FOR FAILURE TO PAY ASSESSMENTS.

Sale for delinquent assessments shall be made by the County Treasurer, commencing sixty days after delinquency. Notice of sale must be made in the manner prescribed by the general laws, relative to sales for delinquency of taxes. Tax deeds shall not issue for one year after the sale. Certificates issued to the district for lands not sold, may be sold by the district to any person who will pay all amounts owing. Any purchaser has a lien for the amount paid by him, and costs and charges prior or subsequently paid by him, and interest at ten percent.

§ 4204.

DISPOSAL OF LANDS BID IN BY DISTRICT.

Lands sold to the district may be disposed of by the Commissioners, and the funds received therefor shall become the funds of the district, to be used for its benefit.

§ 4205.

SUB-DIVIDED LANDS—LIEN UPON.

Where land is sub-divided, the assessment may be paid and the liens cancelled as to separate sub-divisions.

§ 4206.

IMPROVEMENT OF WATERCOURSES, ETC.

The Board shall have power to improve any watercourse flowing through the district, and the beds of any streams changed shall become the property of the district.

§ 4207.

CONDEMNATION OF STATE AND MUNICIPAL LANDS.

§ 4208.

Condemnation of state or municipal lands may be made by the district whenever necessary.

ADJOURNMENTS.

The Board may adjourn from time to time.

§ 4209.

NOTICE TO AGENTS.

Notices may be given to an agent, where the owner has filed the name and post-office address of such agent.

§ 4210.

RE-ASSESSMENT.

Re-assessments may be made where necessary because of the reduction of the amount of assessments upon any land, or where the assessments are invalid.

§ 4211.

MAINTENANCE. LEVY.

Maintenance assessments must be made and levied annually by the Board, collection to be the same as in school districts.

§ 4212.

RULES AND REGULATIONS.

Rules and regulations may be made by the Board.

§ 4213.

COMPENSATION OF COMMISSIONERS.

The compensation of Commissioners shall be \$5.00 per day while engaged in actual performance of their duties, in addition to actual expenses. The Board may fix a different salary for the secretary, in lieu of the *per diem*; payments to be made by the Treasurer upon orders of the Board, and vouchers for all expenses must be filed.

§ 4214.

ESTABLISHING DRAINAGE IMPROVEMENT DISTRICTS UNDER
CHAPTER 176 OF THE LAWS OF 1913.

ESTABLISHMENT OF DRAINAGE IMPROVEMENT DISTRICTS.

This Act provides for the establishment of drainage systems and for the improvement of existing drainage systems, by persons who shall not desire to incorporate as a drainage district under the law first summarized herein and the Act amendatory and supplemental thereto, or if there shall not be a sufficient number to be benefited to form a drainage district, as provided in said laws.

§ 1.

DEFINITIONS.

This section defines "drainage system," "damages," "property benefited," "property damaged," "public roads," "other roads," "public utilities," "County Engineer," "Prosecuting Attorney."

§ 2.

PETITION FOR SYSTEM

Petition for the improvement may be made by one or more owners of property to be benefited thereby, must be filed with the County Commissioners, and shall set forth the route and termini of the proposed improvement. A bond for \$200.00 for expenses in case the petition is not granted, must also be filed.

§ 3.

ENGINEER TO EXAMINE AND REPORT.

On filing such petition, the County Engineer must examine and report whether the improvement is necessary and what changes, if any, should be made in the plans.

§ 4.

DISMISSAL OF PETITION.

A petition must be dismissed if the Engineer reports adversely.

§ 5.

FORMATION OF THE DISTRICT.

If the Engineer's report is favorable, the Board of County Commissioners must require him to make survey, plat and estimate of cost, which shall be preliminary only, and shall not be binding as a limit. The Board must also give the improvement district a serial number, in the order of time of formation of the improvement districts of the county, formed under this Act, entitling it; "Drainage Improvement District No. _____ of _____ County."

§ 6.

ESTIMATE OF PROPERTY DAMAGED AND BENEFITED.

The Board must require the County Engineer to make a schedule and estimate of all property both benefited and damaged by the proposed improvement, with total number of acres benefited, specifying the manner in which the improvement is to be made, and a schedule of all property damaged must be arranged in parallel columns, with a blank for the property owner to accept the estimated amount of damages and benefits to his property.

§ 7.

ENGINEER'S PLAT.

The Engineer's plat required in § 6 must show details as to the course of the improvement, boundaries of all lands affected, location of roads, etc., and the names of owners, surveys, grade lines, etc.

§ 8.

NOTICE OF HEARING UPON ENGINEER'S REPORT.

Upon the filing of the Engineer's report, a day for hearing must be fixed, and three weeks notice must be given by publication, the hearing to be had at the most convenient place.

§ 9.

HEARING ON ENGINEER'S REPORT.

At the hearing, all objections must be heard and all pertinent evidence received. Changes may be made in the estimates or findings of the Engineer. If changes cause

additional damages to property, or may damage property not damaged under the original plan, a new schedule of damage shall be prepared by the Engineer and served upon the persons affected.

§ 10.

DEEDS, CONSIDERATION, ETC.

If any owner of property which may be damaged agrees to the estimate of damages made by the Engineer, deeds to the District shall be executed. In fixing the consideration to be paid, the benefits must be taken into account. County warrants shall be drawn for all amounts to be paid to the property owner.

§ 11.

AGENTS TO SECURE DEEDS—CONDEMNATION.

If all parties do not settle on the above plan, the Board may appoint an agent to secure deeds from owners who shall not have settled. Condemnation proceedings must be instituted by the County Attorney if deeds are not procured from parties within a reasonable time.

§ 12.

RIGHT OF EMINENT DOMAIN.

The right of eminent domain is given to counties in behalf of the improvement district.

§ 13.

OFFSETTING OF BENEFITS.

The jury in such condemnation proceedings must offset all benefits in its verdict.

§ 14

WARRANTS FOR DAMAGES.

Damages given either upon settlement or upon condemnation, must be paid by the county warrant from the current expense fund.

§ 15.

CONSTRUCTION OF THE SYSTEM.

Construction of the system must be commenced when the Board of County Commissioners shall finally determine

the route, plans and boundaries of the district, and when damages have been settled, or when damages have been settled as to a particular part of the proposed improvement, the construction of which is feasible by itself.

§ 16.

COST OF IMPROVEMENT PAID BY PROPERTY BENEFITED.

The cost of improvement must be paid by the property benefited. Assessments shall bear interest not to exceed eight percent, the rate to be fixed by the Board of County Commissioners. The cost may be represented by warrants or bonds, as the Board shall determine, at the hearing provided for in § 10. If warrants, they shall be payable in not to exceed five annual installments; if bonds, in either ten or fifteen years, as the Board may determine. If ten year bonds, the installments are five per cent. for the first three years, ten percent for the next five years, and fifteen percent for the next two years. If fifteen year bonds, the installments are: interest only for the first two years, three percent for the third year, four percent for the fourth year, five percent for the next two years, six percent for the seventh year, seven percent for the eighth year, and ten percent for each of the succeeding years. Bonds shall be payable on call in serial order, whenever money is available in the fund, and upon two weeks notice.

§ 17.

SALE OF BONDS AND WARRANTS.

The Board may sell the warrants or bonds to pay the cost of the improvement. Any unsold bonds may be issued to the contractor in payment. Whenever construction is done by the Board of Supervisors, the bonds may be issued in payment for work, labor and material.

§ 18.

ELECTION NOTICE.

When the County Commissioners determine to proceed with the construction, they must order an election, on two weeks publication and fourteen days posting. Only electors

of the county, owning land in the district, are entitled to vote.

§ 19.

BOARD OF SUPERVISORS.

At this election two supervisors are elected who, together with the County Engineer, shall comprise the Board of Supervisors of the district. This Board has charge of construction and maintenance, and may employ a superintendent. Afterwards there must be an annual election of one supervisor for a two year term.

§ 20.

ELECTIONS IN DISTRICTS HERETOFORE ORGANIZED.

Elections in districts heretofore organized under the law of which this is an amendment, shall be held in the manner provided in this Act.

§ 21.

BOARD TO CONSTRUCT SYSTEM.

The Board of Supervisors shall have charge of the construction of the improvement. It may change plans, with the approval of the Board of County Commissioners, but there shall be no essential deviation from the route or alterations of the plans or mode of construction, that will increase the cost more than one-fifth, nor any deviation from the route until a new right of way has been obtained. The County Commissioners may let the construction by contract or may contract with the United States for the construction. If no contract is let, the Board shall construct by day labor and shall give preference in employment to persons owning land to be benefited by the improvement.

§ 22.

COMPENSATION OF THE BOARD AND OTHER SPECIAL EMPLOYES.

The compensation of the Board of Supervisors, Board of Appraisers hereinafter provided for, and any special engineer, attorney or agent employed by the County Commissioners, the maximum wages and the maximum price to

be paid for materials shall be fixed by the County Commissioners. Each County Commissioner shall be paid \$4.00 per day for time actually spent under this Act, in addition to his regular salary, also all officers shall receive actual expenses. All costs of construction shall be paid upon vouchers or verified pay-rolls, by warrants upon the County Treasurer, drawn upon the proper fund, which shall bear interest at not more than eight percent, as fixed by the County Commissioners.

§ 23.

PUBLIC UTILITY CROSSINGS.

Whenever it is necessary to cross public roads or other public utility, the Board of Supervisors must give notice to the authorities, persons or corporation having charge thereof; such authorities, persons or corporations may file plans and specifications for such crossing, to be put in by themselves, which must be approved by the County Engineer. They may then construct the system across their properties, the proper proportion of which shall be charged against the district. The cost of the crossing shall be credited upon assessments of the property on which it is made. As to public roads, the cost shall be paid by the county, city or town maintaining such public road.

§ 24.

APPORTIONMENT OF COST OF IMPROVEMENT.

When the improvement is fully completed, the County Engineer must make and file a complete statement of total costs of the improvement, including his own services and those of the prosecuting attorney, to which ten percent must be added to cover possible error. The County Commissioners must then appoint a Board of Appraisers, consisting of the County Engineer and two others, to apportion the cost of the improvement against the property and the county or counties, cities and towns within the district, in proportion to benefits.

§ 25.

WHO ARE BENEFICIARIES.

Whenever the drainage system benefits any public road or sewer system, the proper part of the cost must be apportioned to the county or town so benefited.

§ 26.

IRRIGATION SYSTEM AS BENEFICIARY.

If the drainage system benefits an irrigation system, by carrying off waste water, the benefits so resulting shall be considered in the apportionment of benefits.

§ 27.

PUBLIC LANDS BENEFITED.

State, school and granted lands benefited must bear their proportion of the cost.

§ 28.

APPORTIONMENT CERTIFIED AND FILED WITH COUNTY COMMISSIONERS.

The appraisers must prepare and file with the County Commissioners a certified schedule showing their apportionment in detail, as to all lands benefited.

§ 29.

HEARING ON APPORTIONMENT, ASSESSMENT ROLL, LIEN.

The Board of Commissioners must fix a day for hearing upon the apportionment and give notice. Any person interested may file objections to any item or items. The Board must consider and examine the schedule and objections filed, and may add to or strike property therefrom, change or modify or re-apportion, and must give proper credits to all parties entitled thereto. As finally completed, the Board must make an order approving the apportionment. Thereupon the County Auditor must prepare an assessment roll and turn it over to the County Treasurer for collection, in accordance with the resolution of the Board of Commissioners. Assessments are a lien upon the property assessed, which date back to the time of the original determination to proceed with the improvement.

§30.

DISTRICT FUNDS—COLLECTION—RE-ASSESSMENT.

Construction and maintenance funds shall be kept in separate funds by the County Treasurer. Installments thereof shall be collected at the same time and in the same manner as general taxes, and bear interest after delinquency at ten per cent per annum, and the lien may be foreclosed, as in the case of general taxes. Re-assessments may be made to cure any irregularity because of which an assessment may be uncollectible, and supplemental assessments may be made to meet a deficiency, where property does not sell for enough to pay the assessment against it, or where certain property was not subject to assessments.

§31.

ANNUAL CHARGES—LEVY TO COVER SAME—HEARING.

The Board of Supervisors shall make and file an annual statement of the amount required for maintenance, and the Board of County Commissioners shall make levy to meet the same, in the same proportion as upon the original apportionment. But upon application of two or more assessed property owners, a hearing must be had for the purpose of re-apportionment, in the even-numbered years. For that purpose three appraisers shall be appointed, who shall make and file their report not less than twenty days prior to the hearing. Notice of the hearing shall be given by publication. At such hearing said Commissioners shall make such changes as they may find to be just. The Board of Supervisors, with the approval of the Board of Commissioners, may exceed their maintenance allowance in any one year, the excess to be included in the levy of the following year, but in case of an unusual excess, by spreading the same over a series of years.

§32.

COSTS TO MUNICIPAL CORPORATIONS.

Costs to municipal corporations may be met by levies, to be paid the same as against property benefitted, or may be paid by general bond issue of the municipality.

§33.

ABANDONMENT—REDUCTION—ENLARGEMENT OR BETTERMENT
OF THE SYSTEM.

Upon the same mode of proceeding as upon the original establishment of the system, County Commissioners may abandon the system or any part thereof, or strike lands from the district no longer benefitted by the improvement, or enlarge or improve and better the system. The striking of lands shall not affect assessments theretofore made against them. When improvements are made, the costs shall be apportioned as in the original instance, and new lands assessed for any such improvements become a part of the district.

§34.

NEW TERRITORY TO SHARE PART OF THE ORIGINAL COST.

When the system is thus extended, the new territory made a part of the district may be made to pay its proper proportion of the value of the existing system, either by rebating assessments upon the property originally in the district, or by payments into the maintenance fund for the benefit of such former lands.

§35.

PROSECUTING ATTORNEY TO BE LEGAL OFFICER.

The prosecuting attorney shall prepare suitable blanks for the County Commissioners under this Act, and advise the officers of the county and the various boards, with respect to their duties herein.

§36.

RULES AND REGULATIONS—CARE OF THE SYSTEM.

The Board of Supervisors shall make suitable and reasonable rules and regulations, and keep the system clear of obstructions.

§37.

DISTRICTS IN TWO OR MORE COUNTIES.

Drainage systems under this Act may be in two or more counties, County Engineers of each county to examine and make report, and the County Engineer of the county

having the greatest length of the system, to be the engineer of the system and member of the Boards, as herein provided.
§38.

REPEALING CLAUSE.

§39 and §40.

UNCONSTITUTIONALITY OF PART.

The unconstitutionality of a part of this Act shall not affect the constitutionality of the remainder.

§41.

EMERGENCY CLAUSE.

§42.

SYNOPSIS OF DRAINAGE LAWS OF WISCONSIN.

By B. M. VAUGHAN, ESQ., Grand Rapids, Wisconsin.

In Wisconsin there are five laws under which wet lands can be drained (even though such drainage is without the consent, or even against the will of the owners of some of the lands proposed to be drained). These five laws are popularly known as "The Town Drainage Law," "The County Drainage Law," "the Mines and Swamp Land Drainage Law" "the Drainage District Law" and "the County Reclamation Law."

THE TOWN DRAINAGE LAW is the one under which small wet tracts are usually drained. Under this law a proper petition, directed to the board of supervisors of the town, is made by six or more land owners of a town, at least one of whom owns lands to be affected. After the filing of the petition the supervisors make out a notice and therein fix a time and place of hearing on the petition. The petitioners cause this notice to be served personally, at least 5 days before the hearing, on each of the resident owners of the several tracts of land to be benefited. If there are non-resident owners of any such lands, the notice must be posted in three public places in the town, ten days before the hearing.

At the time and place in the notice fixed, the supervisors meet, receive proof of the posting and service of the notice (and adjourn if necessary, but not in all exceeding 20 days). They examine the lands which will be benefited and hear all who desire to be heard on the petition. If they find that the benefits from the proposed work will exceed the damages therefrom and the costs of construction, and that the work will promote the public health or welfare, they award proper damages to the lands that will be damaged by the proposed work and assess benefits against the lands that will be benefited and assess against the town such benefits as the public highways will receive. They then make an assessment for construction of the work, which assessment for construction (after deducting the assessment made against

the town) is apportioned on the benefited lands, according to the benefits assessed.

If a town drain crosses a highway, the town must build and maintain the bridge and the part of the drain within the highway right of way.

After the contract for the work is let the assessment for construction is due (or if payable in installments, one-third is due) and if not previously paid is collected with, and in the same manner as the general tax.

Any aggrieved land owner may appeal to the County Court, from the order laying out or refusing to lay out the drain, which County Court appoints commissioners to hear and decide the appeal.

Where the wet land is in a town and a city or village or in two towns, or in a city and village, similar proceedings are authorized and the law provides who shall act with or in place of the town supervisors.

The law provides that on petition of a majority of the land owners, officers in charge may make the assessment for construction come due in three annual installments and may borrow money to do the work.

The town drainage law is considerably used in the drainage of small tracts, but is subject to the objection that local politics often enter into the proceedings and control the result.

THE COUNTY DRAINAGE LAW.

Under this law the County Board of any County, when in their opinion the public health or welfare will be thereby promoted, may lay out and construct drains and ditches or straighten and enlarge water courses *into or through two or more towns of the county.*

The proceeding is much the same as that under the town drainage law.

In a practice of substantially 30 years, in Wisconsin, I have known of only one drain being constructed under the County Drainage Law.

THE MINES AND SWAMP LAND DRAINAGE LAW.

This law is practically unused.

THE DRAINAGE DISTRICT LAW.

Under this law probably seventy-five to eighty per cent of the public drainage of Wisconsin is now made.

Proceedings under this law are always "pending" in court. Once a district is organized, its commissioners and proceedings are always under the direct supervision and control of the court. Under it erroneous proceedings can always be corrected and defects cured at any stage of the proceedings.

A synopsis of this law follows.

PETITIONS—PROCEEDINGS.

Whenever (1) a majority of the owners of land in a district of wet, swampy or overflowed land, who shall represent one-third in area of the lands to be reclaimed or benefited, or (2) whenever the owners of more than one-half of such land desire, (a) to construct a drain, ditch, levee or other work across the lands of others, for the promotion of the public health or welfare and the drainage of such land, or (b) desire to keep in repair any such drain, ditch or levee, heretofore constructed under any law of this state, such owners may file a petition in the Circuit Court of any County wherein any of those lands lie.

The statute provides what the petition shall contain in some detail.

But no petition having the required number of signatures is void,—the statute providing that it may be amended in any and all respects "to conform to the facts."

Any adult owner of land may at any time, while the petition is pending, ask and be made a petitioner and be counted as an original petitioner, "for all purposes."

The territory in any drainage district need not be contiguous, provided that the court is satisfied that the proposed work can be more cheaply done if in a single district than otherwise. Districts can not overlap.

On the filing of the petition the Circuit Court makes an order fixing the time and place of hearing on the petition.

In case infants or incompetent persons are interested one or more guardians ad litem are appointed by the court to

represent them in all drainage hearings. Failing to do so the infants and incompetents may be brought in later, such guardian ad litem appointed and their lands bound by proper assessments.

The clerk of the court gives twenty days notice of the hearing on the petition as prescribed by the statute, (1) by posting it in 5 public places in the proposed drainage district, (2) by serving the notice or causing it to be served on each owner of land within the proposed district, who resides in any county in which any part of the district is situated, personally or by leaving at his last usual place of abode with a person of suitable age and discretion, (3) by publishing a copy of the notice at least once a week for three successive weeks, in some newspaper published in each county from which any part of the district will be taken. The statute provides what proof of posting, serving and publishing of this notice shall be sufficient.

Failure to give this notice, in all respects as required by law does not in any way oust the court of jurisdiction. An adjournment may be taken and defects of service cured by order of the court, or where such defects of service only affect one or a limited number of tracts of land the owner or owners of such lands may, in writing, appear and waive notice, or be brought into court and required to show cause why they be not bound by the judgment.

On the day fixed by the notice for the hearing, any land owner may appear and contest, (1) the sufficiency of the petition, (2) the sufficiency of the signers of the petition, (3) the sufficiency of the notice, (4) the constitutionality of the law, (5) the jurisdiction of the court, (6) the fact that the public health or public welfare will be promoted by the proposed work, (7) the fact that the benefits from such work will exceed the damages and costs of construction thereof.

The only questions of facts tried at this hearing are whether the petition had the required number of signers, whether the public health or public welfare will be promoted and whether the benefits will exceed the damages and costs of construction. These are all tried by the court without a

jury. The court has a broad discretion in the granting of adjournment of this hearing.

On the hearing, the affidavit of three or more of the signers of the petition, stating that they have examined it and are acquainted with the locality of said district, and that the petition is signed by a sufficient number of land owners to satisfy the law is made *prima facie* evidence of the facts therein stated. Also affidavits of land owners, in the form prescribed, to the effect that they own certain lands in the district, are made sufficient evidence of such fact. Deeds made to defeat the drainage are declared to be fraudulent and are not given effect as against drainage.

If the court finds (1) that the petition has the required number of signers, (2) that the public health or public welfare will be promoted, and the benefits from the drainage will exceed the damages and cost of construction thereof, the court orders all amendments that may be necessary and appoints three suitable competent persons, commissioners, to carry forward the proposed work.

These commissioners are in effect officers of the court, are under its supervision, and are always subject to its order. They are the corporate authority. They may be owners of land in the district or not, must live within 25 miles of the district, and must, before they act, take the constitutional oath and must file in court a sufficient bond, to be approved by the court, conditioned for the faithful discharge of their duties as commissioners and the faithful accounting for and application of all moneys which shall come to their hands as such commissioners. The commissioners hold office until the first Tuesday in the second succeeding July, after they are appointed, and until their successors are appointed and qualified. A majority is a quorum. They, after qualifying, may borrow money to carry on work necessary to be done before assessments are confirmed. A vacancy in the office of the commissioners may be filled at any time by the court. Upon petition (1) of two-thirds of the land owners in a district who represent more than one-half of the lands or (2) of the owners of more than two-thirds of the lands in a drainage district asking the removal of a

commissioner, the court must remove such commissioner. The commissioners are always subject to removal by the court for good cause.

The commissioners when appointed and qualified may do all necessary acts in the surveying, laying out and (when approved by the court) in constructing, repairing altering, enlarging, cleaning, protecting and maintaining any ditch, drain, levee or other work, for the doing of which they are appointed, may construct all necessary bridges, crossings, embankments, protections, dams and lateral drains, and may clear out the courses of artificial and natural watercourses within their drainage district, but not so as to impair the navigability of natural navigable watercourses. For any entry necessary to the exercise of these powers the commissioners are not liable for trespass. Anyone interfering with their lawful duties may be restrained by the court. The order appointing the commissioners organizes the drainage district as a public corporation with right to sue and be sued and other corporate rights. They have power, if railroad companies do not, on proper notice, open their rights of way, yards etc, to open the same and cross with their drains and with ditching machinery.

BURDEN OF PROOF.

Commissioners of drainage districts are public officers. The presumption is in favor of the regularity and validity of their official acts. When any of their reports, or any part of such reports is contested, remonstrated against or called into question the burden of proof is on the contestant, remonstrant or questioner.

ANNUAL REPORT.

The commissioners must make and file each year, between July 1st and 15th their annual report, (1) on the financial condition of the district, including an itemized report of the work done in the district during the year last past, of the work necessary the coming year and where that work is needed, and must (2) file vouchers for all of their expenditures, which vouchers and report remain on file in

court. They must, in their annual report (3) assess and apportion to the lands and corporations benefited what is necessary to be raised for incidental expenses and annual repairs for the coming year.

The commissioners are always subject to the order of the circuit court having jurisdiction and may, at any time, be required by that court to make a report of any subject pertaining to their duties. They receive \$3.50 per day and necessary expenses, for their services.

FIRST REPORT.

After the first commissioners are appointed, qualified and organized, (by electing a president, secretary and treasurer from their number) they examine the district, have levels taken, locate the drains, in proper places (and may change the locations in the petition specified) determine the size of drains, report all of these facts to the court, and report what lands and what corporations will be damaged and what benefited by the proposed work, and they must assess against the several parcels of lands and corporations in the district the sums that they will be benefited as special benefits.

These special benefits, as to land, are the increase in value of the land specially due to drainage. The commissioners, in this report, apportion and assess the *cost of construction* against the several benefited corporations and tracts of land in proportion to the *benefits* that they have assessed. "Corporations" in Wisconsin drainage district law include railroad companies, other private corporations of all kinds, towns, cities, villages and other drainage districts. The commissioners also award damages to all lands and corporations that will be damaged.

The commissioners also report to the court the probable cost of keeping such work in repair when completed.

When this report is filed by the commissioners, the court makes an order fixing the time and place of hearing, on the report, and the clerk of the court gives notice of the hearing. This notice, among other things, contains the benefit assessed and damage awarded to each tract of land and corporation and the sum assessed against the same for construction.

This notice must be published for three successive weeks in some newspaper published in each county in which lands in the district are situated, and a copy of the notice must be served on each of the persons owning lands in the district who reside in any county where any land in the district is located, and on each corporation assessed, in the same manner as a summons in circuit court is served, but if such resident land owner is absent from such county, the published notice is sufficient notice to such absent land owner.

Five or more days before the hearing any land owner, owning lands, awarded damages or corporation awarded damage may remonstrate against them as too low, and any land owner assessed or any corporation assessed may remonstrate against the benefits assessed against his lands (or it) as too high or remonstrate against benefits assessed against others as too low.

On demand of remonstrants issues on benefits and damages shall be framed by the court and tried by the jury. All other issues must be tried by the court without a jury.

After all issues, if any, are tried and all necessary amendments if any are made, the court makes an order confirming the report and directs the commissioners to proceed. This order may direct that the assessments for construction be paid in not more than 15 installments, the first of which shall fall due not more than 5 years after the date of the order, and the last of which must fall due within 20 years. Unless the court order that the assessments for construction come due in installments they are due and payable at once.

At any time before the commissioners have contracted to sell bonds based on these special assessments the assessment against any land or any corporation may be paid in full.

When assessments for construction against lands are confirmed it is the duty of the clerk of the court to certify such assessments to the Register of Deeds of the county in which the lands lie, for record, whereupon each such assessment becomes a lien upon the tract of land against which it is assessed.

BORROWING MONEY.

The commissioners may borrow money, not to exceed the amount of the unpaid assessments for construction, which have been confirmed by the court, and are yet unpaid, and may issue bonds or notes of the district bearing a rate of interest not exceeding 6% per annum, which notes or bonds are district obligations and are a lien on the assessments for construction, on which they are based. These bonds must be advertised for public sale at a premium unsuccessfully before they can be sold at private sale.

After the assessments are confirmed by the court, the commissioners give notice of their confirmation and of the time when and place where the assessments may be paid, by publication for two successive weeks in one or more newspapers published in the county in which the drainage proceeding is pending.

Assessments (if the court makes them payable in instalments) become due September 1st, each year.

COLLECTING ASSESSMENTS.

If assessments are not paid to the commissioners, when due, the commissioners certify them to the proper town, city or village clerk and they go upon the tax roll, and are collected by the local tax collector, or by the county treasurer as the case may be, in the same way and at the same time that general taxes are collected.

If the drainage assessments against land are not paid to the commissioners or later to the town, city or village treasurer, or later to the county treasurer of the county in which the lands are situated, the lands are advertised for sale at the same time and in the same manner that they are advertised for sale for unpaid general taxes and if not redeemed they are sold, and a certificate of sale for the drainage assessment is issued to the buyer. These drainage assessment certificates are separate from the general tax certificate issued for delinquent general tax.

They bear ten per cent interest per annum.

At the end of three years, if the certificate is not redeemed a drainage assessment deed may be issued on a

drainage assessment certificate, in the same manner as a tax deed issues on a tax certificate; but no such deed cuts off or adversely affects any drainage assessment or instalment thereof, later falling due, and no tax deed cuts off any drainage assessment.

In case any error is made by any of the public officers, by which an assessment or an instalment or interest is not collected when due, it may be collected "the next year or any subsequent year."

Every town, city and village treasurer, collecting drainage district funds must transmit them to the drainage commissioners on or before the last Tuesday of March, each year. For his failure to do so he is liable to a penalty and he and his bondsmen are liable on his official bond.

The county treasurer must keep a separate account with each drainage district, the funds of which he handles, and must turn all drainage funds over to the proper commissioners on demand.

If assessments for construction are payable in instalments, they draw interest at the rate of 6% per annum from the date of the order of confirmation, collection of which interest is enforced in the same manner as collection of the principal.

ADDITIONAL ASSESSMENTS.

If the first assessment for construction is not enough to finish the work confirmed, additional assessments for construction must be made by the commissioners and reported to the court for confirmation.

If at any time for any reason there is not enough money on hand to pay valid, outstanding obligations of the district (bonds, coupons, works-contracts, etc.) the commissioners must make an additional assessment sufficient to cover the deficiency. This additional assessment must be apportioned on the sum of all benefits then in force against said several tracts and corporations. This additional assessment the commissioners report to the court for confirmation.

Assessments for construction cannot altogether exceed the benefits on which they are apportioned.

SUPPLEMENTAL WORK.

If the commissioners are of the opinion that the drains already laid out and confirmed will not give the district, or any part of the district, sufficient drainage to comply with the purpose of this law they must, on petition of the owners of ten per cent of the land in the district, (and may on their own motion) report the necessity for supplemental work and the reasons why such work is necessary. In that event the commissioners may, if necessary, assess supplemental benefits, and must award damages, where lands will be damaged by the supplemental work. The Court, when report of the necessity for supplemental work is filed, makes an order fixing the time and place of hearing thereon.

Notice of hearing on this petition is served by publication for three successive weeks by posting a copy in 5 public places in the drainage district and by mailing a copy to each owner of land or easement in the district, whose post office address is known to the commissioners, or whose post office address can, by reasonable inquiry, be ascertained, and to the secretary or clerk of each assessed corporation. In case of defective service the hearing can be adjourned to obtain service.

In assessing *supplemental benefits* they must be so assessed as to correct, so far as possible, errors in the prior assessments of benefits "so that all lands in said district, assessed benefits, shall be required to pay a sum total for the construction of the total drainage proportional to the actual benefits received by said lands from the total drainage." This assessment of supplemental benefits cannot decrease the former assessment of benefits. In this way bond holders are protected against any decrease in the assessment on which their bonds are based.

SUB-DISTRICTS.

Whenever the owners of land in any portion of a drainage district desire more thorough or different drainage than that constructed in or planned for the rest of the district, a majority of such owners may petition the commissioners for such more thorough or different drainage. The commis-

sioners must then examine the land and report the facts to the court. The Court fixes a time and place for hearing on this report. Notice of the hearing on this report is served as the law provides. Hearing is had and if the court decides that the petitioners are entitled to the additional or different drainage prayed for, the court may order a *sub-district* formed, fix its boundaries etc. The benefits of and cost of construction of this "more thorough or different drainage" are assessed against "the lands and corporations in said district (not sub-district only) benefited" and the damages caused thereby are awarded to the lands and corporations in such district damaged.

The commissioners of the original district are commissioners of the sub-district.

(NOTE. Sub-districts are usually organized where one part of a drainage district is suited for gardening or building (adjoining cities or villages) and other parts of the drainage districts are suited for farming only.)

OMISSION TO ASSESS.

Omission to assess benefits etc. against or award damages to any land or corporation, at any stage of the drainage proceeding, does not affect the jurisdiction of the court to confirm the report or render the assessments void, but, as soon as the commissioners learn of the omission, they must take steps under the statute to assess the proper benefits and award the proper damages.

If any land owner claims his lands to be exempt or that the assessment against his land is void, he may be brought into court on order, and required to show that his assessment is inequitable or is void because his land was not assessable in the first instance. In case he shows that his lands were not assessable or his assessment was unjust, for any reason, the sum assessed for construction against his lands which is thus lost to the district is spread upon all the assessable lands and corporations of the district.

VALIDATION PROCEEDINGS.

In case an order is made confirming an assessment and the validity of the assessment is called in question, thereby

interfering with the sale of drainage securities, the law provides a simple procedure for clearing up all questions against the validity of assessments.

APPEALS.

No appeal against judgments or orders in drainage proceedings is allowed unless taken within thirty days.

HOW JUDGMENTS COLLECTED.

Orders confirming assessments are judgments and except where the drainage statute provides a specific means of collection, such assessments are collected the same as other money judgments.

NOTICE WAIVED.

Notices of any drainage hearing may be waived by filing a written waiver in court, with the same force and effect as if the notice had been duly served.

CONDEMNATION.

The drainage district has power to purchase or condemn outlets and other necessary ditch rights of way outside of the district.

IRRIGATION LEASES.

Under restrictions protecting the rights of other lands in the district, the commissioners of drainage districts may lease, for a limited time, irrigation rights in drainage ditch water, the rental to go into the district treasury.

MISCELLANEOUS.

The drainage district law provides that it shall be construed liberally to promote drainage.

The owners of lands outside of the district may petition to be brought into the district and have their lands drained. The court may order them brought in and assessed, the same as other lands in the district receiving like benefits.

When lands outside of a drainage district are receiving benefits from district drains "by direct or indirect, natural or artificial connection therewith" such lands may be

brought into the district and assessed for benefits that they receive from the district drainage.

Lands in a drainage district are liable for all damages that may result to lands lying outside of its boundaries, because of the work done in said district. "The word damages shall be construed to mean such damages only as can be recovered of natural persons for like injury, resulting from like work."

Obstructing public drains is a misdemeanor, punishable by a fine, and the district can collect from the guilty party by action whatever sum its drains are damaged by the obstruction.

A drainage district having eight miles or more of ditch may (on petition of the commissioners, after notice and a hearing and approval of the court), buy, operate and maintain a dredge or other appliances for keeping its system of drains in repair. The cost of such drainage machinery if not available from district funds on hand, is levied as an additional assessment on all of the assessable lands in the district.

THE COUNTY RECLAMATION LAW is a comparatively new law in Wisconsin, only incidentally providing for drainage, and is, as to drainage, so indefinite that it seems to me not to be workable. I do not know of any drainage ever having been put in under this law.

